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THE
H I S T O R Y
OF THE
BOROUGHES
AND
MUNICIPAL CORPORATIONS
OF
THE UNITED KINGDOM,

FROM THE EARLIEST TO THE PRESENT TIME:

WITH AN
EXAMINATION OF RECORDS, CHARTERS, AND OTHER DOCUMENTS,
ILLUSTRATIVE OF THEIR CONSTITUTION AND POWERS.

BY
HENRY ALWORTH MEREWETHER,
SERJEANT AT LAW,
SOLICITOR GENERAL TO THE QUEEN;

AND
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BARRISTER AT LAW.

IN THREE VOLUMES.—VOL. I.

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MDCCCXXV.

**STEVENS AND PARDON, PRINTERS,
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TO HIS GRACE
THE DUKE OF WELLINGTON, K.G.,

CHANCELLOR OF THE UNIVERSITY OF OXFORD,

&c. &c. &c.

WHO HAVING,

BY HIS VALOUR AND MILITARY SKILL,

DELIVERED HIS COUNTRY AND EUROPE FROM WAR,

CONTINUES, WITH UNABATED ZEAL AND LOYALTY,

TO MAINTAIN IN PEACE

THE RIGHTS AND PRIVILEGES OF THE ENGLISH CONSTITUTION,

THESE VOLUMES ARE RESPECTFULLY DEDICATED.

PREFACE.

THIS compilation has been founded upon a collection of charters and records relative to the boroughs of this country, commenced many years since, and from time to time increased as leisure and opportunity allowed.

The late inquiries, and meditated consideration of the municipal institutions, have led to the hastened completion of the work.

Many of the documents and records have been liberally supplied from persons connected with the boroughs.

From Mr. Illingworth, one of the Sub-commissioners of Records, the earliest communications were received. And to Mr. Griffith, the intelligent Record Searcher, the greatest obligation is due, for

PREFACE.

repeated assistance and extensive communication of charters and records, many of which are included in this work ; as well as some of the collection of the early cases, by Mr. Willcock, of the Chancery Bar.

The unrestrained liberality with which the records of the Tower were opened for inspection, by the orders of Mr. Petrie, as well as the aid so readily afforded in referring to them, by Mr. Bailey, Mr. Hardy, and Mr. Sharpe, require the warmest acknowledgments.

A similar liberality was exhibited by Mr. Leach, with respect to the records at the Rolls Chapel ; and the most prompt and unwearied assistance was also experienced there from Mr. Palmer, together with the use of his accurate and complete indexes.

The access to the valuable and extensive contents of the British Museum, was much facilitated by the extensive information and practical knowledge of Sir Henry Ellis ; and Sir Frederic Madden was also kind enough to aid our researches.

To Mr. Dawson Turner we are indebted for the communication of the important leet rolls of Yarmouth ; which, besides their intrinsic value, are to be additionally prized, because so few records of

PREFACE.

that description, and of so early a date, are to be met with in any of the boroughs ; and to Mr. Gooding, of Southwold, we are obliged for the use of the documents relative to that place.

To Mr. Hudson Gurney our thanks are due, for the kind communication of the laborious collection, by Mr. Daniel Gurney, of extracts from the borough books of Lynn.

For charters and records, relating to Ireland, we have derived considerable assistance from Mr. Lynch, barrister at law ; and for those of Cork, from Mr. Robert Travers.

To Lord Kingsborough we have to make the same acknowledgments, for the loan of an invaluable collection of autograph letters of the time of Queen Elizabeth, relative to the interesting affairs of Ireland.

The very valuable Southwell Manuscripts are in the possession of Mr. Thorpe, who kindly permitted any extracts to be made from them ; and Mr. Cochran granted the same indulgence as to that portion in his possession.

Nor should we omit the communications which have been received from Mr. Crofton Croker, who allowed the inspection of his extensive manuscripts.

PREFACE.

Notwithstanding these numerous channels of information, and the ready assistance which has been obtained in so many directions, still it is impossible, in a work of this extent and variety, depending upon individual research, to avoid many, and perhaps great errors.

If such exist, they will no doubt be readily discovered by those acquainted with the different places to which they refer. If pointed out with candour, they will be gratefully acknowledged: nor will their correction be less useful, if exposed from other motives.

Considering however the object of this undertaking, less anxiety is entertained respecting errors in detail, or on minor points, not affecting the general principles.

The result of the whole compilation has been the chief object in view; with respect to which, neither doubt nor alarm are professed to be entertained.

February, 1835.

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INTRODUCTION.

ANTIQUARIAN research, for the mere purposes of curiosity, may have little claim to general attention: but some advantage will be derived from recalling past events, if the improvement of our present condition be the practical object of the inquiry.

When unforeseen evils, against which the early experience of mankind could not guard, require a remedy, and it becomes necessary to ascertain their cause, in order to effect their cure, we must then take a retrospective view to arrive at the source of the difficulty.

This pursuit, to those who are immersed in the busy scenes of life, may appear irksome and distasteful; but others will pursue the research with zeal and pleasure. To lessen the distaste of the former, and direct the course of the latter, is the intention of this undertaking.

Notwithstanding the necessary tediousness of compilations, it will not be desirable to state the substance only of the authorities quoted. Where speculation is so tempting, but so unsatisfactory, care should be taken to avoid the adoption of theories instead of facts. It is proposed

therefore to extract whatever is found material : to give the words of the records, documents, or authors to which reference is made, adding such observations as may appear to be requisite.

But that the reader, who is disinclined to wade consecutively through all the authorities, may readily refer to the places or periods which are the more immediate object of his research, ^{and} the Index will supply a reference to the former. With a view to the latter, a chronological division has been adopted, in order to make each succeeding document a practical exposition of the preceding ;—to simplify the arrangement—and to exhibit more clearly the progressive development of the general result.

Authentic documents, therefore, containing the real history of the Municipal Institutions of these kingdoms, will be produced, in order to afford a distinct view of the successive changes which have occurred ; and of the time and manner in which we have departed from the institutions of our ancestors : that it may be known what was the original constitution of those bodies before we venture upon the important question of their reform.

To confirm the statements made—by actual documents upon which they are founded—and to afford those, who will undertake the task, the opportunity of satisfactorily pursuing the inquiry, and of judging for themselves, are the objects of the *Compilation*. To point out the result, in an intelligible form to the general reader, is the intention of the *Introduction*.

The real nature of the English constitution, particularly of those parts which relate to the municipal institutions and the elective franchise, cannot but be a subject of interest at the present moment, when some changes have already been made, and others are contemplated.

It has generally, but too hastily, been assumed, that the early history of our constitution is involved in such doubt, that it is impossible to trace its original nature. It is with more truth asserted, that in later periods the usages of the constitution have been involved in such intricacy, as to render it difficult to unravel the perplexing maze.

The correctness of the first proposition is disputed:—and for its refutation, the reader is referred to the body of this work. The second is unfortunately too well founded. For when, with reference to our municipal institutions, we consider the confusion which has arisen, in modern times, between boroughs and corporations—burgesses and freemen—the rights by birth—service—and redemption, with reference to corporate—parliamentary—and trading privileges—together with the perplexity resulting from the burgage tenure—corporate—and scot and lot rights of burgess-ship—it must be admitted that the apparent difficulty is formidable.—It may be hoped that it is not insurmountable; and that a practical remedy may be suggested in the restoration of the constitution purified from its abuses.

A *sketch* of the history of boroughs was some years since submitted to the public; followed by a practical illustration in the report of the West Looe case: and subsequently by a smaller publication referring to the same subject.¹

It may be thought too remote to commence the *present* history from the Saxon times:—but in that period our

¹ A *Sketch of the History of Boroughs and of the Corporate right of Election*; in a *Letter to Lord John Russell, on Practical Parliamentary Reform*. By Henry Alworth Merewether. London, 1822.

Report of the Case of the Borough of West Looe, before a Committee of the House of Commons, April 18, 1822, with Preface, Notes, and Cases, &c. London, 1823.

An Address to the King, the Lords, and Commons, on the Representative Constitution of England. London, 1830.

authentic documents begin; and before it, no certain information exists.

The *Saxon Laws*, therefore, will first be extracted—followed by that portion of *Domesday* which relates to that æra.

Larger extracts from this valuable record, referable to the reign of William the Conqueror, the time of its compilation, will be added; with the few other extant documents of that period.

The laws of Henry I. and Henry II. are almost the only authentic records from the close of the reign of William I. to the commencement of that of King John; excepting some charters of the reign of Henry II., not now in existence, but mentioned by *inspeximus* in those of subsequent kings.

During the eventful reign of King John, more charters were granted to boroughs, than during the same space of time in any other period of our history. These form, in themselves, an important feature in this undertaking; and assume an interesting character from the time in which they were granted, and from the nature of the grants. They are arranged chronologically—the only mode by which the several kings can now be represented as speaking the language they really intended to use; and by that means their grants are explained and illustrated by the light which they throw upon each other.

Extracts are also given from the legal documents of this period, which tend to illustrate the general subject, particularly from our ancient statutes and law authorities; with charters in each reign to establish the occasional changes in the nature, language, objects, and effects, of those grants of the crown.

The inferences drawn from these documents, and affirmed with confidence, are—

1st. That boroughs existed in this country from the earliest periods of our authentic history; and that although all boroughs were not cities, all cities were boroughs, and had their municipal rights in that character alone.¹

2nd. That they were *all essentially alike* in their object, constitution, and general character—as well in England as in Wales, Scotland, and Ireland.

3rd. That the *same class of persons* originally formed the body of *burgesses* in all boroughs.

4th. That *this class has never been directly changed from the earliest time to the present moment.*

5th. That the burgesses were the permanent free inhabitants of the boroughs; performing their *duties*, and enjoying their *privileges*—as the *free inhabitant householders, paying scot and bearing lot; presented, sworn, and enrolled* at the court leet.

6th. That they had no other character till the reign of Henry VI. :—when the *first charter of municipal incorporation* was granted; which superinduced upon the original character of burgesses—that of corporators also :—for the purpose of giving them the power of *taking, and inheriting lands by succession* :—and of *suing and being sued by their corporate ndme.* But *the class of persons continued still the same.*

7th. That the power of *selecting* the burgesses, now exercised by the corporations or their select bodies; by which, in some places, the numbers are reduced to the smallest—and in others, increased to an equally improper amount; is a *manifest usurpation*; and only supported by modern decisions.

8th. That *non-resident* burgesses were first introduced in direct defiance of the parliamentary writ, and the statutes

¹ Co. Litt. 109 a.

of the realm, in the instances of the persons elected as representatives : and afterwards extended by usurpation to the electors : particularly on the restoration of Charles II. ; when, under the statute of the 13th year of that reign, the resident corporators were expelled from their offices by the king's commissions ; and the great officers of state, and other persons, were introduced in their stead :—another manifest encroachment upon the ancient simplicity of these institutions.

9th. That although these usurpations were in some places corrected after the Restoration, yet in others they were improperly continued, and were subsequently sanctioned by legal authority.

10th. That the result of supporting these usurpations, and the various *usages* which in different places have sprung out of them, has produced an anomalous, complicated, and unintelligible system, which has given birth to a distinct branch of the law, relative to corporations—more intricate and mysterious than any other ; not known by those who act under it—altogether hid from the unlearned—and but partially revealed to the learned.

11th. That nothing can restore these municipal institutions to a reasonable and practical form, but re-establishing the ancient uniformity of their rights and privileges : by which means they may be equally known and understood by all classes ; and any abuse, or departure from the general principle, would be instantly corrected by the influence of public opinion, or by uniform judicial determinations.

Such are the practical conclusions deducible from the documents here collected.

Theorists may suggest fanciful speculations, which how-

ever plausible, yet wanting the confirmation of experience, cannot be adopted with confidence; and the Legislature, in the exercise of its comprehensive wisdom, must hesitate before it sanctions them.

The means of arriving at a correct judgment, are here laid before the public: and it may be added, FOR THE FIRST TIME.—For, notwithstanding the number and variety of authors who have approached this subject, it may with truth be said, that none have traced the history of our municipal institutions from their origin to the present period.

This attempt is not founded on ignorance of the fact, that our best writers are much divided upon the important points of this inquiry. It is not however proposed to discuss their disagreement with each other, or to endeavour to reconcile their differences. If through the dark labyrinths of antiquity, a way may haply be found with any tolerable degree of certainty, little solicitude will be entertained about the wanderings and errors of the many who have before attempted the same road; and as there is no hypothesis to be maintained—no object to be served—no party to be flattered—and no other end in this research than the desire of finding out and vindicating the truth;—it is possible the right path may be discovered more easily, than by those, whose greater abilities were diverted from it by some wrong bias; although amongst them should be included the names of Sir Edward Coke, Prynne, Petyt, Tyrrel, and Willis. But the success of the attempt must be submitted to the judgment of the candid and intelligent reader. It may be considered an indiscreet vanity to suppose that any thing can be added to the works of those laborious authors. At the same time it should be remembered, that many of them wrote with controversial views,

and subject to the prevailing prejudices of their day ; which tended to distract their attention from the proper bearings of the subject; and to warp their judgments. Others applied themselves only to partial views of the question ; and some, not having the means of correcting the errors which had been adopted by their predecessors, from necessity contented themselves with blindly following them. Besides, the numerous public records now so readily accessible to all—and many of which have been made public for the general use—were at that time either lying together in confused heaps, or, if partially arranged, were accessible only to a few ; and those indisposed to make the proper use of them, or inclined to pervert and misrepresent them.

Thus, *Brady*, who was Keeper of the Records at the Tower, has in his work on Boroughs, written with a particular design, mistated many of the documents he cited : yet as they were in his own keeping, he had the ready means of preventing any inaccuracies, had he been desirous of doing it.

Tyrrel, his opponent, had not access to the documents quoted by Brady, nor the means of correcting his errors in citing them. He could only attack the reasoning, assuming the records to be accurate. Thus Brady kept the field without a competitor ; and by his misrepresentations obtained for his work the success he desired.¹

There is no doubt that *boroughs* existed during the *Saxon period* ; and also a class of persons called *burgesses* ; many of both being expressly recorded in Domesday.

¹ Gilbert Stuart, in his *View of Society in Europe*, says, that “Dr. Brady was the slave of a faction ;” and that “Hume, struck with his talents, and deceived by his ability, founded his history on Brady’s tenets.”—p. 339.

The *Saxon laws* exhibit the great *personal* division of society into the *bond* and *free*:¹ the *freemen* being mentioned throughout these laws, as contradistinguished from the *villains*.

The "*liber homo*" or "*freeman*" has therefore existed in this country, from the commencement of our institutions: and the term has also continued in use to the present day; although it has been perverted from its original signification, and has thus been productive of much error.

As to the *local* division of the country, the essential distinction was between *shires* and *boroughs*: the former being subdivided into hundreds—tythings—lathes—and wapentakes;² the latter, where their extent rendered it necessary, into *wards*.³

The *Saxon laws* refer both to these *personal* and *local* distinctions.

As to the *former*, the "*freemen*" were distinguished from the "foreigners" or "strangers,"⁴ and the "servi" or *villains*. The lords were answerable for the conduct of the last:—the *freemen* for themselves. They were prohibited from vagrancy—and all their dealings were to be transacted in the town before the king's officer—they were restrained to a fixed *residence*: and were bound by *oaths* and *pledges* (borghs)⁵ to keep the king's peace and to obey the law. The *householder*⁶ was the person responsible for the due regulation of his house, and the conduct of his *guests* or *innates*.⁷

Our law from the earliest period favoured the freedom⁸ of the subject: and therefore the various codes of the *Saxon*

¹ P. 41—55.

² See Worcester, 209; Lincoln, 221—262.

³ Pledges, p. 24, 33, 36—40, 49, 55.

⁷ P. 15.

³ P. 26, 27.

⁴ P. 14—25.

⁶ P. 24, 31.

⁸ P. 50.

laws, point out the numerous methods by which the servi or villains could be made *free*,¹ which did not depend upon tenure alone. One of them—*service for seven years*, will require hereafter particular notice. So marked was the distinction between those of free and servile condition, that prohibitions, enforced by fines, were directed against the harbouring of fugitive villains.

The *local* divisions of shires and boroughs² had their presiding officers, and separate jurisdictions.³ The *alderman*, at first, was the presiding officer in both ;⁴ but subsequently the more specific names were applied to the king's officer in each—of *shirereeve* for the county—and *portreeve*⁵ for the borough.

The pledges of the freemen were given—their oaths of allegiance taken—and their public duties and the local government regulated—in the *folcmote* :⁶ which, in after times, was in the counties called the *shiregemote* or *sheriff's tourn*⁷—and in boroughs, the *burghmote* or *court leet* of the borough.⁸

In those courts, from which we have derived our system of Trial by Jury, persons were sworn⁹ to make the necessary public inquiries, and to decide disputed facts.

Another important point established by these laws is, that every *freeman*, in order to be *law-worthy*—by taking upon himself the burdens and responsibilities of the law,¹⁰ and by those means entitling himself to its privileges—was *bound* to submit himself to the jurisdiction of the hundred, decenna, or borough ; and if, after twelve years of age, he neglected to do it, he was subject to punishment for his default. So that, by these institutions, a freeman (or liber

¹ P. 22, 42.² P. 17, 19, 26.³ P. 16, 17.⁴ P. 19, 20.⁵ P. 31, 54, 59.⁶ P. 12.⁷ P. 38.⁸ P. 43, 51, 52, 335.⁹ P. 33, 335.¹⁰ P. 44.

homo) was, as regarded his own rights, *entitled*, and as related to the public, *bound* to perform the duty of putting himself under pledge, and security by oath, to abide by the law: a system which, in the subsequent part of this work, will be shown to have existed till modern times—in some of the boroughs, in different parts of the kingdom.

The only remaining observation necessary with respect to the Saxon period is, that *throughout the whole of it, neither in the laws, chronicles, nor charters, is there a trace of any municipal corporation.*

Notwithstanding the common opinion to the contrary, it will appear from the records, that *William the Conqueror* did not alter the institutions of the country¹ to the extent which has generally been imagined. For, in fact, the provisions and spirit of the Saxon system of policy² still continued to prevail.

The two leading records which will establish this position, are the laws compiled and published by William the Conqueror; and the great fiscal record of Domesday Book.

In the former, the same features are discoverable as in the Saxon laws. The king's peace³ is to be preserved—the *freemen* are to be sworn to their allegiance—the payment of *scot* and *lot*⁴ is mentioned—and the watch and ward⁵ in boroughs is enforced:—the provisions for selling in the presence of witnesses are repeated; as well as the general system of giving pledges.⁶ The first trace also is to be found of the law subsequently so distinctly stated in Glanville,⁷ that “all bondmen who remained without claim for “a year and a day in any borough, &c., should be free.”

¹ P. 60, 68.

² P. 73, 114.

³ P. 61.

⁴ P. 61, 62, 67.

⁵ P. 61, 67.

⁶ P. 62, 63, 66.

⁷ P. 67.

Domesday¹ also clearly establishes that the feudal system² existed to some extent in this country before the Conquest : and that after that event, the tenure continued nearly the same as it was in the time of Edward the Confessor.

Boroughs and burgesses are frequently mentioned in that record : a list of which will be found at the close of this work. Many of those boroughs are entered distinctly by themselves, before the *terra regis*, and the general return for the county : and this is an early confirmation that the boroughs were separate and distinct from the counties,³ and that *the principal characteristic of a borough was, its separate jurisdiction*,⁴—partly exclusive of the sheriff's interference.

The reeves of the boroughs are spoken of, as well as the shire-reeves.⁵

There are entries in *Domesday*, in almost every county, which establish that *burgess-ship did not depend upon tenure* :⁶ because many burgesses are described as belonging to other manors.⁷ If *tenure* was the basis of their right, they would have belonged altogether to the manors, and would not be described as burgesses of the boroughs, because they did not hold of them.

But if *residence* made them burgesses, then the entry is explained, reconcileably with the facts : because they would, in respect of their *resiancy*, be burgesses in the place of their *residence* ; but would be entered under the manors of which their lands were held.

There are also numerous instances in which the burgesses being distinctly connected with their *houses*, and the latter

¹ P. 68.² P. 69.³ P. 115, 131, 164, 217.⁴ P. 254, 255, 259, 263.⁵ P. 71, 72, 76, 100, 112, 113, 222, 224⁶ P. 78, 83, 84, 86, 114, 154, 481, 484, 521, 526, 527, 930, 933, 1077.⁷ P. 159, 160, 164, 166, 175, 202, 203, 205—207, 209, 214, 221, 239, 254, 256, 274, 278, 281, 289.

being expressly described as “inhabited,”¹—it is impossible not to infer that they were *householders*.² They paid the custom of gable for their houses, and other taxes.³ In the entry as to Canterbury,⁴ 14 burgesses are mentioned instead of their houses; and in Thetford, Norwich, and other places, the identity cannot be mistaken.

It is also clear, from many passages,⁵ that *all* the householders were *not* burgesses. Peers, ecclesiastics, minors, females, villains, and persons of infamous character were excepted from the privileges, and also exempted from the duties of burgess-ship:—many houses are therefore mentioned in the returns which had not burgesses.⁶

Those only who bore their share of the burdens of the place—or, according to the laws of the Saxons, and William the Conqueror,⁷ *paid scot and bore lot*—were entitled to the privileges; those who from poverty or other cause did not pay the charges, or serve the public offices of the borough, being excluded.

It would have been inconsistent with the whole system of the law at that time, if *non-residents* could have been burgesses; and therefore we find, throughout this document, that the *burgesses* were *resident*—and in that respect distinguished from the members of the merchant *guilds*,⁸ and of the trading companies, who might be *non-resident*. It is from this latter practice, that the modern abuse of *non-resident burgesses* has been in a great degree introduced, or rather maintained.

“*Inhabitants*” are only once mentioned in Domesday, in the return of Hereford. “*Liberi homines*,” or “*freemen*”

¹ P. 154.

² P. 79, 81, 82, 95, 98, 160, 168—170, 174, 175, 207, 217, 220, 254, 259, 260, 273—275, 277—279, 281, 282.

³ Domesday, fol. 2.

⁴ P. 154.

⁵ P. 98, 109, 111, 112, 114, 205, 207.

⁶ P. 112, 155, 156, 159.

⁷ P. 114.

⁸ P. 117.

residing in other parts of the country, and not in boroughs, occur throughout the book, as frequently in proportion as the burgesses; and in some counties they are very numerous—those entered in Suffolk amounting in the whole to 10,067.

In Ipswich, the *householders* are expressly called “*burgesses* ;” whilst in the same entry other persons, “dwelling elsewhere” out of the borough, are described by the appellation of “freemen.”¹ And it appears that the burgesses could renounce the borough, and cease to be burgesses, by residing elsewhere.²

Another point is likewise established by this record, as well as by others, that, generally speaking, the *Castles*³ were not within the bounds of the boroughs. And the merchant *guilds*,⁴ and their members, were also distinct from the municipal jurisdiction of the town—from the borough rights—and the burgesses.

The system of pledges,⁵ derived from the Saxon law, and continued for centuries afterwards, is expressly recognized in Domesday.

With reference to the privileges generally enjoyed by boroughs it should be observed, that throughout this record they appear to be claimed and exercised by the “*burgesses*” only—and no other class of persons is specified as entitled to them. By this document, therefore—as well as by the writs and precepts for the election of members of Parlia-

¹ P. 280, 282.

² P. 276, Norwich.

³ P. 49, 79, 113, 171, 176, 186, 208, 226, 253, 263, Chester; 327, Scotland; England, 342, 406; 549, Tower of London; 552, Bristol; 603, Wexford; 660, 834, 842, note, 1609, 1662. There are nearly 50 castles mentioned in Domesday, but only one of them (Arundel) is stated to have existed in the time of Edward the Confessor. We have seen that all the boroughs mentioned in Sussex, existed in the time of King Edward.

⁴ P. 80, 81, 115, 117, 141, 175, 192, 264, 305, 320, 322, Scotland; 324, 329, 350, 559, 564, 565, 599, 628, 826, Bristol; 839, 842, 946, 1046, 1069, 1147, 1245, 1673.

⁵ P. 99, 100, 192.

ment from the earliest time—and generally by the charters—it is indisputably established, that to this class alone originally belonged all the rights:—these persons were called upon to discharge all duties—and were the objects of the bounty of the crown. The other names subsequently introduced of “freemen,” “commonalty,” “commons,” “inhabitants,” “honorary freemen,” “potwallers,” &c.—are innovations—capable, it is true, of being explained, and reconciled with the ancient laws and customs in the manner attempted in this work; but capable also of being misapplied, as they have been, in a manner inconsistent with the ancient law. And this has introduced the confusion so much to be deplored.

After a careful investigation of this invaluable record, *no trace can be found in it of any municipal corporation existing at the time of its compilation; although ecclesiastical corporations are mentioned.* The negative inference therefore against the existence of the former at that period, is all but conclusive. And as with respect to some particular boroughs the survey is expressly to the point; so likewise the general conclusion from the whole is, that in all the boroughs the *burgesses were the inhabitant householders.*

During the reign of William II.¹ no municipal grants, nor changes in the municipal institutions,² appear to have been made.

Henry I. ordained fresh codes of laws, but they differed from the preceding merely in form, and in slight variations of language. They are framed in the same spirit of liberty and equal justice which characterised our earliest institutions.

The charters of that reign mark the same distinction be-

¹ P. 192.

² P. 293.

tween *villains* and *freemen*,¹—*burgesses* and *foreigners*—and the privileges granted are of a *local* character,² conferring *local* rights on the burgesses *residing*³ within the limits of the borough. From these documents also,⁴ as well as from many others of subsequent reigns, it is clear that *originally all the boroughs were intended to be the same, in their nature, object, and effect.*⁵

The *merchant guilds* mentioned at this period also appear, as before, to be *distinct from the municipal government of the boroughs.*⁶ This is particularly instanced in the Chnichten Guild, the soke or liberty of which, over the lands granted to it, is described to be partly within the *borough* of London, and partly without. And the members are called the “*men of the guild*” and not the “*burgesses.*”

As a proof of this position, the burgesses of Totness,⁷ which had been long previously a borough, were fined for having set up a guild without legal warrant; and at the same period, adulterine⁸ guilds in many of the boroughs were suppressed by the authority of the crown.

The same distinguishing features exhibited in the laws and charters of this date relative to *England*, are to be found in the “*regiam majestatem,*” and the *leges burgorum* of *Scotland*.

The “*slaves*”⁹ or “*bondmen,*”—the “*freemen,*”—the “*baillies of boroughs,*”¹⁰ the *juries*,—and the “*pledges*” or “*borghs,*”—are mentioned; as well as the modes of obtaining freedom, particularly by *birth*, and undisturbed *residence* away from their lords for *seven years.*¹¹

¹ P. 304, 571.² P. 380.³ P. 308.⁴ P. 392.⁵ P. 379, 414.⁶ P. 305, 307, 364, 366, 381, 385, 390, 392, 395, 401, 410, 437, 461, 468, 488, 522.⁷ P. 320, 322, 340.⁸ P. 341.⁹ P. 310.¹⁰ P. 313.¹¹ P. 316.

The domicile of a man is described as¹ “the proper house where he dwells, lies, and rises daily and nightly.” And in another part, a dwelling is more shortly described, as “the place where he makes his residence.” As the Scotch law was, like the English, precise in defining the fixed residence of every person; so was it directed, like the English, against *vagrancy* and the *harbouring* of *strangers*.²

The charters of Scotland have also the same *local* character: and from the “leges burgorum” of David I., and the Welsh and Irish charters, it appears that the *burgages*³ in boroughs were held in Scotland,⁴ Wales, and Ireland⁵ by *burgage tenure*. The “burgesses” or “indwellers” are expressly distinguished from those persons who lived out of the boroughs in the *counties* at large, who are characterised by the name of “*upland-men*” and “*lands-wardmen*.” It being distinctly stated that,⁶ “if a husbandman, dwelling without the burgh, had a burgage within it, he should not be esteemed a burgess, but only in that burgh in which he had the burgage.” In another part of the same laws the *houses* of the burgesses are mentioned⁷ nearly in the same manner as those of England are in Domesday;⁸ the *burgesses* appearing also to be the *householders*. And the jurisdiction of the burgh courts is contradistinguished from that of the king’s general courts.

From the charters in the reign of Henry II., the same direct inference is also to be drawn, that the privileges of the different burghs in England, Scotland, Ireland, and Wales, were in substance alike,⁹ and to be enjoyed only

¹ P. 317.² P. 360.³ P. 323.⁴ P. 328.⁵ P. 376, Dublin.⁶ P. 324.⁷ P. 327, 328.⁸ P. 330, 331, 341.⁹ P. 340, 343, 362, 379, 390, 438, 459, 460, 465, 490, 525, 547, 553, 603, 636.

by those who *resided* within the boroughs. But *all* who *resided*¹ were entitled to the privileges, if they were not within the exceptions before mentioned,² and were of *free condition*, and *householders*; and, as a necessary consequence, paid *scot* and bore *lot*; and were *sworn* and *enrolled* at the *court leet* of the borough.³

The charters of this period also gave *that privilege which was the distinguishing characteristic of a borough*—namely—that it should be *exempt from the interference of the sheriff*. The burgesses therefore, had the *return of all writs*;⁴ and were, in the language of those times, “to be *quit of suits of shires and hundreds*;⁵” as a necessary result of which exemption, they were required to give their *pledges* in their own courts, and were liable to be amerced,⁶ if they did not provide them.

All that is contained in the earlier Saxon laws—in those of William I.—Henry I.—and the charters of those periods—is confirmed, and in a great degree repeated, in the compilation of the law which passes under the name of “*Glanville*;⁷” the Chief Justiciary of England. And the same observation may be made with respect to Britton—Bracton—Fleta—and the *Mirror*—the text authors of the greatest authority in our law: and by which the correctness of the positions previously laid down may be properly tried.

The right to *freedom by birth*, may be distinctly traced through all these authors, as unquestionably a part of our early English law, and the necessary result of the doctrine of *villainage*. The rights by *marriage*—*service*—and *emancipation*—are also all explained by the nature of the relative positions of the lord and villain.

¹ P. 373, 409, 454, 458, 483, 503, 583, 618.

² P. 427, 435, 454, 476, 482, 618.

³ P. 447, 478, 494, 555.

⁶ P. 341.

² P. 336, 338, 369, 372.

⁴ P. 437, 467, 490, 523, 587.

⁷ P. 345.

The law as to freedom by *residence*, is repeated in Glanville;¹ where it is said, that “if any native bondsman “shall have dwelt quietly—that is without claim—for a “year and a day in any privileged town, away from his “lord, so that he shall be in their community—to wit, the “*guild*—he shall by that act be emancipated from vil- “lainage.” And the same principle in substance, is to be found, in the *Regiam Majestatem*—the *Leges Burgorum*—Bracton, Fleta, and the Mirror.

The few charters in the reign of Richard I., have in view the same object as those of former reigns; as well as the more numerous grants of the time of King John. All have the same tendency; giving the boroughs the general privileges of exclusive jurisdiction,² and exemptions, which could not be enjoyed by any but *residents*.³

The important conclusion to be drawn from these charters, which destroys every argument for the modern abuses—is, that down to this period—within the time of legal memory—there were not any municipal corporations.

Without some explanation, the importance of this fact may not at first sight be apparent to the general reader.

The great abuse in corporations has arisen from the assumed power of capriciously admitting into their body whom they thought fit; by which means, large numbers of honorary freemen have from time to time been made burgesses, who, in effect, either directly or indirectly, control or neutralize the rights of the inhabitants.

The only pretence upon which the burgesses of a borough could exercise a discretion in admitting any person into their liberties, was founded upon the fact of his intending to come, or actually coming, to reside within the

¹ P. 350.² P. 379, 382.³ P. 380.

borough: upon which the burgesses were to determine whether he was a fit person to be received as a permanent inhabitant, with reference to his character, condition, station, and means. Such a discretion was originally exercised in this country under the common law: the corporations endeavoured to carry it further, by assuming to themselves the right of *arbitrarily* determining who should belong to their body;—what inhabitants should be admitted—who should be rejected—and what non-residents should be received. The courts of law, and committees of the House of Commons, have too readily supported this assumption of power on the ground of *prescription*.

The right of making burgesses was likewise claimed by the *select bodies* of the corporations, under the name of the “common councils;” to the exclusion of any interference by the burgesses at large. That claim was also asserted upon the same ground of *prescription*:—or in other words, upon the presumption that such a right had existed from before the time of legal memory; which for this, and other purposes, is fixed by statute at the reign of Richard I.

If therefore it can be proved that, *in fact, corporations did not exist till long after the reign of Richard I.*; it is clear that the right of arbitrarily making burgesses, and the exclusive power of the common councils, as far as they are founded upon *prescription*, would be negatived; losing the only ground upon which any attempt can be made to support them.

As the exercise of these powers has undoubtedly produced the greatest abuses—and, by placing all the privileges of the boroughs under the power of a few—has kept alive the most injurious suspicions and jealousies—it becomes of the greatest importance to ascertain whether they are founded upon prescription or not.

The charters, to the close of the reign of King John, decide that point incontestably.

They are numerous—applicable to all parts of the kingdom—have all varieties of language, and an apparent variety of privileges.¹ But in none of them is there any mention of a corporation. Nor any term from which the existence of any municipal corporate body can be inferred. On the contrary, the privileges are given expressly to the burgesses and their *heirs*² to hold *hereditarily* (“hereditarie”): and as the great distinction in principle, with respect to corporations, is, that they hold by *succession*, and not by *inheritance*, this fact ought to be decisive of the point. It should also be remarked, that the word “*successors*,” does not occur at this time with respect to any municipal corporation: though it does in many grants to and by ecclesiastical corporations; who are contradistinguished³ from the municipal aggregate bodies of burgesses and others.

If therefore there is any fact which can be historically proved, and relied upon with certainty—and for which we refer with confidence to the documents in the body of the work—it is—that *there were no municipal corporations at the period of which we are speaking*; and consequently there can be no prescriptive right in corporations to make burgesses arbitrarily; nor for the exercise of that power by the common councils. But the burgesses were the *free inhabitant householders*, who in consequence of their standing in that position by the common law, paid *scot* and bore lot, and were *sworn* and *enrolled* at the court *leet*.

¹ P. 422.

² P. 296, 309, 316, 335, 355, 360, 361, 363, 364, 367—370, 372, 376, 383, 389—391, 403, 404, 406—412, 414, 415, 417—419, 422, 438, 439.

³ P. 489.

The subsequent history points out the manner in which the gradual usurpations were superinduced upon this simple origin; and how the creation and confirmation, of municipal corporations were progressively effected.

The great charter of liberties was confirmed by Henry III. to the *freemen*¹ of the realm: and all the liberties and free customs were secured to London, and other cities, boroughs, and towns in England and Ireland; and to the barons of the five ports.²

The sheriff's *tourn* and the *view of frankpledge* were directed to be duly kept, as had been accustomed, for the proper preservation of the king's peace.³ In the same charter the first provisions are also introduced to restrain alienations to ecclesiastical bodies; which taking by succession,—and consequently holding in perpetuity—prevented all future profits to the lord: they were, therefore called the dead or unprofitable hand, and the grants were termed alienations in *mortmain*.⁴

Successors The first instance of the adoption of the term "*successors*" in a grant to a municipal body, occurs in 1227, the 12th of Henry III. in a charter to the city of London, giving the citizens free warren at Staines. It is there used, as in many other places, in conjunction with "heirs;"⁵ and it is very questionable, whether it is not even then applied to the ecclesiastical bodies mentioned in the beginning of the charter—the archbishops—abbots—and priors.

Henry 3 It seems highly improbable that it should refer to the citizens; because the same king, by a subsequent charter, in 1265, in the 50th year of his reign, after a seizure of the liberties of London, restored them to the citizens and

¹ P. 423.

² P. 427.

³ P. 429.

⁴ P. 422, 435.

⁵ P. 439, 461, 462, 528, 529.

their *heirs*. And in 1268, he granted another charter in a similar form, to London, and other places.¹

At the same period the word "*commonalty*"² was frequently introduced; which in modern times, upon the authority of Dr. Brady, has been supposed to imply a corporation; but numerous are the authorities, through many succeeding reigns, to show, that the term has not that restricted application, but is one of the most general import.

Common seals also then came into frequent use, but their adoption is no proof of a corporation; for there are precedents and authorities to show, that in fact they were, and legally might be, used by places not incorporated.³

During the whole of the reigns of our earliest kings, there can be no doubt that the sheriff's *tourn* in the hundreds—and the *courts leet and view of frankpledge* in the *boroughs*—were constantly held. They are repeatedly mentioned in the Saxon laws—the early codes of William I.⁴—Henry I.—Henry II.—in the Great Charter and the confirmations of it:—in the statutes—and page by page in Britton, Bracton, and the Mirror. Nor can there be any doubt that at those courts all the *resiants* or *householders*, capable of paying *scot* and bearing *lot*, in the counties at large, and in the boroughs, were *presented* by the *jury*, gave their *pledges*, and were *sworn* and *enrolled*; and that an *inhabitant householder* of a *borough*, so circumstanced, was a "*burgess*."

It is also equally clear, that no fact is found to establish the existence of any *municipal corporation* before 1297, the 26th of Edward I.—the time when *burgesses* first sate in Parliament, under writs requiring "two *burgesses* to be

¹ P. 444, 445, 447, 459—467, 471, 474, 475, and see 481, 486, 511, 524, 528, 529, 548, 593, 674, 789, 799, 824, and see 832, 852, 946, 960, 1060, 1085, 1220, 1254, 1520.

² P. 440, 451.

³ P. 443, 444.

⁴ P. 28.

returned from each *borough*” by the “*burgesses*.” On the contrary, all the laws, charters, and statutes, afford the strongest inference, that none existed.

It is therefore clear, that the class of persons who, in 1297, were called upon as *burgesses* to return members to Parliament, were *not corporators*: but the *inhabitant householders, presented, pledged, sworn, and enrolled*—and this universally in all boroughs;¹ for they were all substantially alike—their charters essentially the same—one law was applicable to all—and one form of writs and precepts directed to every borough.

That the reader may be enabled to apply these observations to the several boroughs; and also to the documents in the subsequent part of this work; a list is afterwards given of those which sent burgesses to Parliament, in the 26th of Edward I.: for the purpose of showing what places were at that time treated as boroughs.

The parliamentary right of election, which has been already settled by the Legislature, is not the subject of this inquiry; but it will be material from time to time to refer to those classes of persons who, under the old system, were allowed to vote in parliamentary elections as *burgesses*, because it will be one mode of showing who they really were; and what palpable abuses were occasionally allowed and sanctioned.

The term “*successors*” which appeared once before in a charter to London, of the reign of Henry I., again occurs in 1283, the 12th of Edward III., in a document relative to Beverley; where it is coupled with the term “*heirs*,” and is applied to the burgesses. But Beverley had formerly been an ecclesiastical establishment.

¹ P. 29.

In the next year it is used again by itself, with reference to the commonalty of *Nottingham*, in a charter to that place.

But although it appeared in the charters to London,¹ Beverley, Nottingham, and some few other places, still it was by no means generally adopted in this reign : and it is impossible to assume that any change was effected, or intended, in the class or condition of burgesses, by the adoption of this expression. For a subsequent charter to *London*, was granted to the citizens, and their *heirs*² only : and another to the burgesses of Hull and their *heirs*, although their *successors* were also mentioned in another part of the charter.

In the text-book, which is commonly called *Fleta*, composed in the reign of Edward I., the perpetual succession of the ecclesiastical³ bodies of colleges and chapters, is expressly recognized : but there is no application of that doctrine to the aggregate municipal bodies of "*burgesses*."

In the law cases of the reign of Edward II., reported in the *Year Books*, notwithstanding the *commonalty* of Lynn,⁴ in Norfolk, is mentioned as an aggregate body, and its rights and duties in that respect were discussed, nothing is said of its being a corporation. Nor was the corporate doctrine, even as applicable to ecclesiastical bodies, well understood at the time, as appears from a case in the *Year-books* :⁵ though another authority shows that the notion of the *naturally continued succession* of the municipal bodies of the *inhabitants* or *burgesses* of boroughs, was fully recognized in the manner asserted by Lord Coke ; who says that although an ancient grant to a body not incorporate would be good ; yet otherwise it is of such a grant at this day.⁶

¹ P. 546, 552.

² P. 664.

³ P. 573, and 611, the *Mirror*.

⁴ P. 606.

⁵ P. 608.

⁶ Co. Lit. 3. a.

Before the instances are mentioned, by which the terms applicable to corporations were gradually introduced, it should be stated, that in the reign of Edward III.,¹ there is reported in the Year Books, (to which reference has already been made, and also in the cotemporaneous report of the *Liber Assisarum*), a solemn decision as to the persons who were entitled to be *citizens* of *London*. And if that class is clearly defined, with respect to so important a place as the metropolis, it would be difficult to avoid the conclusion that the same description would be applicable to other places: particularly after the perusal of the abundant evidence which will be adduced to show, that all the boroughs were in substance the same; and also the particular reference in many charters to the privileges of *London*.

The "*citizens*" are in this case described to be "*those who were born and heritable in the same city by descent of inheritance; OR who were resiants, AND taxable to scot and lot.*" The latter is the most general description; and as the former would include all who had heritable houses, so would the latter include all other *householders resiant*, who were of *free condition*.

Thus it will be seen, that all the former authorities are confirmed by this solemn decision; and that there is no question, that down to this period, this was the proper description of a citizen;—that it had *no reference to any corporation*;—nor to any fraternity, guild, or other aggregate body,—except the *inhabitant householders*;—particularly as the case goes on expressly to say, that "the right did not extend to any "other persons."

In a subsequent case, relative to a guild in *London*, it was said that "*the commonalty of London was perpetual*;"

¹ P. 633, 634.

but that is explained by Madox in his *Firma Burgi*,¹ who argues that “as the inhabitants of towns would always continue in perpetual succession, so every municipal body was by natural succession perpetual, *whether incorporated or not*.” And as the perpetual succession of the commonalty is here attributed to the perpetual existence of the city—and not to any peculiar right belonging to it as a corporate body—it must be admitted that this is another proof, that even *London*, was not at that time incorporated.

Again, in the reign of Henry IV., in an answer to a petition to Parliament,² against the *improper admission as freemen of London*, by the *masters of trades*, of persons *not continually abiding*³ in the city, it is said, that “no person ought to enjoy the franchise of London, if he was not a citizen resident and abiding within the city.”⁴

In a record relative to Southampton, in the reign of Henry VI.,⁵ it appears, that “living for a *year and a day* in a borough, and paying scot and lot, was held to constitute a burgess:”—the other circumstances of being a *householder*, and being *sworn* and *enrolled*, following as the general qualifications required by the law.

In the same reign also, it appears from the ordinances relative to *Colchester*, that the burgesses of that place were persons “of *free condition*, sworn to the king and the town, *householders bearing scot and lot*.”⁶ “And the persons excluded from being burgesses were, “children—apprentices—law journeymen—chamber-holders, not keeping craft, nor

¹ P. 70, 638, and *Mad. Fir. Bur.* ch. 2, p. 36, 37, et seq.

² P. 785.

³ See also *Domesday, Dover*,—“*Manens assiduus*.”

⁴ And in 1466, 6th Edward IV., there is a document which describes the persons who were to enjoy the privileges of the city, as “continually abiding with his household within the city.”—953.

⁵ P. 879.

⁶ P. 899, 900.

“householding by themselves, nor paying tax, talliage, lot, scot, nor taxes within the borough.”¹

In the 7th of Henry VI., 1428, a return to a writ² stated, that “if a man remained in the city of London for a year and a day, he was not to be taken away upon a writ de nativo habendo:” as is authoritatively laid down in Glanville; although it was said on this occasion, to be against reason and the law.

The charters during the reign of Edward III. were generally granted to “the burgesses, their heirs and successors.” But it has been already shown, how slight an inference is to be drawn from the last expression; and the subsequent facts will prove, that no municipal corporations existed during that reign, nor for nearly a century afterwards.

In the three first Year Books, there is no mention of any corporations. Nor does the term occur, but in the 4th³ and 6th,⁴ where it is introduced occasionally in the margin, referring to that title in the Abridgment by Brooke. But it is not contained in the text, nor is there any reference to Corporations in either of the cases themselves.

The term does not actually occur in the Year Books till 1409⁵—the 11th of Henry IV.—when, in a case respecting the government of the school at Gloucester, it was said, that “it would be unreasonable for the master to be prevented from holding his school where it pleased him, unless it was in a case where an *university* was *corporate*, and “schools founded from ancient times.” The introduction of this term in the *margin* of the *subsequent prints* of these reports is entirely to be attributed to the abridgment of Brooke, which was published in 1586, the 28th of Elizabeth. That

¹ P. 902.

² P. 919.

³ P. 689—693.

⁴ P. 804, 805, 807, 839, 914, 917, 919, 925.

⁵ P. 807.

work has a title of "Corporations;" and the Year Books being first printed in the reign of James I., the editor, it appears, inserted the references to Brooke in the margin; the text itself not referring to corporations.

In the earlier abridgments of Statham,¹ Segden, and Fitzherbert,² there is no such title; although cases entered by Brooke under it, are extracted in those abridgments, which have the titles of "Franchises," "Leets," "Hundreds," "Sheriffs' Tourns," and "Villainage:"—exhibiting the nature of the government and police of that time, both with respect to the local divisions of the country, and the classification of the population under the distinctions of *bond* and *free*.

The cases collected together in Brooke³ under the head of Corporations, are 91 in number:—only 24 of which relate to municipal corporations. All the rest—particularly the earlier cases—refer to ecclesiastical bodies—as abbeys—priors—chantries—societies—hospitals—masters and scholars—chapelwardens—churchwardens—vicars—deans and chapters; and other bodies of analogous descriptions, as the universities—colleges—and guilds. Those *relating to municipal bodies, which describe them as corporations, are all subsequent to the commencement of the reign of Henry VI.:*⁴—the first instance occurring in the third year of that reign—1434—in which it is asserted, that commonalties are bodies politic. Corporations are mentioned a second time in the Year Book of the 19th of Henry VI., 1440, the year after the Hull and Plymouth charters of incorporation.⁵

It is also a striking circumstance, that the term "corporate" is likewise introduced in the printed copies of the *Statutes* in the same irregular manner, in which it is first

¹ P. 692.

² P. 695.

³ P. 693.

⁴ P. 918.

⁵ See post. p. xxxiv.

placed in the margin of the Year Books. The "*titles*" of the statutes form no part of them : but, in fact, are like the entries in the margin of the law cases. The term "corporate" first occurs in the printed statutes, in the *title* of the act of 6th Richard II., statute 4, c. 9,¹ which is made to refer to "towns *corporate*." But it is not justified by the statute itself, nor by the parliament roll ; for, upon inspection, the word "corporate" is not to be found upon it.

A still more convincing proof, that the municipal bodies were not before this time incorporated, or treated as corporate bodies, is this ;—That the statute of the 15th of Richard II.² c. 5, (1391,) which, reciting the former prohibitions against religious persons holding lands in perpetuity, extends that prohibition to guilds and fraternities ; and afterwards adds, that, "because *mayors, bailiffs, and commons of cities, boroughs, and other towns, which have a perpetual commonalty, and others which have offices perpetual, be as perpetual as people of religion, they should not thenceforth purchase to them, and to their commons or offices.*"

From this statute it is clear, that the laws against mortmain did not before this time apply even to guilds or fraternities : still less to mayors, bailiffs, or commons of cities, boroughs, or other towns ; and it is also obvious from the words of the statute, and the introduction likewise of "perpetual offices," that it was still not as corporations that this provision was extended to them ; but as to bodies perpetual by *natural* succession, and not by any artificial notion of a body corporate or politic. Nor are the cities, boroughs, or towns so described by this statute.

// In the reign of Henry IV.,³ the term "Corporate" is for the first time, introduced into a public document, appli-

¹ P. 717, 781.

² P. 728.

³ P. 801.

cable to a municipal body; though it is doubtful whether it is not there used in its primitive sense of *actual local incorporation*; and not in the technical sense in which it is applied in modern times.¹

The inhabitants and *resiants* of *Plymouth* petition the king, amongst other things, that they might be a *body corporate* for the purposes for which corporate powers are chiefly necessary—namely to purchase tenements without the king's license. A petition, no doubt, founded upon the statute last quoted, and the increasing developement of the doctrine of corporations as applied to ecclesiastical bodies, guilds, and fraternities: particularly as the trading companies in London had begun at this time to assume to themselves considerable powers, which had been frequently the subject of discussion between the *liverymen* and the *wardsmen*, or the *inhabitant householders* in the several wards.

This petition was, however, unsuccessful, and, in fact, Plymouth was not incorporated till 28 years afterwards.³

In the reign of Henry V., a statute defines most distinctly who the burgesses were throughout the kingdom. For the act which requires the knights of the shires, as well as their electors, to be resident in their respective counties, also obliges the representatives and electors for boroughs to be "resident, dwelling, and free in their boroughs."⁴ And though that statute has since been repealed, it may still be relied upon as containing a description of the persons who were the burgesses at the time it passed; and ought to have continued so till the present time, as they have never since been directly changed by legal authority.

It cannot fail to be remarked how entirely this description corresponds with the Saxon laws—the common law—

¹ P. 841.² P. 870, 871.³ P. 802, 808.⁴ P. 639.

and the municipal documents—as well as the decisions before quoted relative to London. The “burgesses” were “*resident*,” and in that character they would be suitors at the *court leet*:—they were to be “*dwelling*,” and so would be *householders*, and would pay *scot* and *lot*:—they were also to be of “*free*” condition, and therefore would be *sworn* and *enrolled* at the *court leet*; and would be *free and lawful men* of the place where they were enrolled and dwelt; and as that was a “*borough*,” they would be “*burgesses*.”

No municipal corporations were created at this time: but guilds and fraternities were;¹ and obtained the characteristic powers of corporations by express grants of capacity to receive lands to them and their *successors* for ever. Thus in 1416, Henry V., in the fourth year of his reign, incorporated a fraternity or hospital near Lawford’s Gate, in the suburb of *Bristol*; and declared that the fraternity should be persons capable of receiving lands and tenements to the guardian and his *successors* for ever: and to plead, and be impleaded: and have a common seal: with power to make bye-laws. Which appears to be the first time in which these powers are given in such words.² But they were repeated in the next year, in a grant to the guild of St. George of *Norwich*. And it was not till a far distant period that the *cities* of Bristol and Norwich were subsequently incorporated.

In the reign of Henry VI.,³ the reforming statutes⁴ passed for the regulation of the choosers of knights of the shire: by which, “to remedy the great evils arising from the elections being made by outrageous and excessive number of people *dwelling* in the counties, most part of small substance, pretending to have a voice equivalent with the

¹ P. 824.² P. 825.³ P. 836.⁴ See statute 8 Henry VI., chap. 7; 10 Henry VI., chap. 2.

“ most worthy knights and esquires, *dwelling* within the “ counties :” the elections were directed to be made “ by “ people *resident* and *dwelling* in the counties, having free “ land to the value of 40s. a year.” From which it may be inferred, that the elections for counties before that time, were made by the *free inhabitant householders* who did suit in the *sheriff's tourn* ; as the elections for boroughs were by the same class of persons doing suit at the *court leet* of the *borough*. This is the most reasonable inference ; because, as there is no special provision of the law either way, the general law would be supposed to have prevailed in both ; by which means they would have been on the same footing : differing only in this respect, that while the one was confined to the borough, the other extended over the whole county.

However, it is in this reign the municipal corporations were first introduced. “ Commonalties corporate,” are mentioned in a statute of the eighth of Henry VI. 1429, chap. 27.¹ And in the tenth of Henry VI., 1431, chap. 6, the guilds, fraternities, and companies, are referred to as incorporated.

In the eighteenth year of Henry VI., 1439, the *first charter of incorporation* to a municipal body was granted to *Kingston-upon-Hull*.

Before that time the usual words of incorporation had but rarely been applied even to colleges, guilds, or fraternities ; they had occasionally been introduced in the margin of the Year Books and statutes ; once in the margin of the Patent Rolls ; and several times in the indexes of those documents ; the compilers of them being led by the modern notions upon this head into the belief that the documents they recorded were charters of incorporation.

But it was not until 27 years afterwards, in the sixth

¹ P. 837.

of Edward IV., 1466,¹ that the doctrine was laid down, that the existence of corporations might be *inferred* from the nature of the grant, without words of incorporation; and even at that time the doctrine was much qualified, simply establishing, that “a grant to burgesses, for which they “were to render a rent, made them for that purpose only “a corporation, as long as the rent remained.” A determination which appears to have been founded upon the necessity of supporting the king’s title to the rent, when the burgesses had enjoyed the privileges in consideration of which it was to be paid. The Courts therefore ruled, that rather than the king should lose his rent altogether, and the burgesses protect their own defaults by so fraudulent an objection, they should be held for that purpose, and as against themselves, to be incorporated:—undoubtedly an equitable, if not a legal determination, to that extent, and under those limits. But carried further, so as to draw the inference generally of a corporation from such grants, and for the purposes of supporting the claims of the burgesses, as against the other inhabitants of the borough, or against the public; the determination would be most unreasonable and unjust. The doctrine, even as it is stated above, seems to be open to the objection, that it supposes a borough to be incorporated by implication, as long as the rent lasts, and to cease with the rent: a position very difficult to apply in practice.

The *charter of incorporation to Hull*, of the 18th of Henry VI.,² *differs altogether in its language, and provisions as to the corporate powers, from any municipal charter before granted.* Some in the ancient form appear previously on the same Roll of this reign;³ and *they contain no words of incorporation. Neither does a charter of*

¹ P. 853.² P. 857.³ P. 859.

confirmation to Hull ten years before; nor a petition from that place for a further confirmation, presented to the king eight years previous to this grant.

The Patent Rolls contain no entry of a corporation to any municipal body¹ before this time.

The Hull charter² does not commence, as had been before usual, with an inspection of the former charters; but, reciting the king's good disposition to the place, *in express words incorporates the mayor and burgesses, giving them also express corporate powers.*

Incorporations however did not immediately become general: for this charter is *followed by others upon the roll³ which are not of that description.*

But Plymouth,⁴ Ipswich,⁵ Southampton,⁶ Coventry,⁷ Northampton,⁸ Woodstock,⁹ Canterbury,¹⁰ Nottingham,¹¹ and Tenterden, were incorporated by similar terms, and according to the new form adopted for Hull.

It is not surprising that the corporations did not spread more speedily; because the corporate bodies which then existed had already begun to abuse the powers given to them, and to make usurpations upon the rights of the people.

The *companies* and *liveries* of London had been making encroachments upon the privileges of the *householders* in the *wardmotes*; ¹² and it appears that the *guilds* also had exercised abuses to such an extent, that it became necessary for Parliament to interfere for the protection of the people.

In the Parliament Rolls of the 16th of Henry VI., 1467, it is said, that "the guilds, under colour of general words "in their charters, had made many disloyal and unreason-

¹ P. 860.² P. 861.³ P. 869, 880, 883, 888.⁴ P. 871.⁵ P. 870, 875.⁶ P. 880.⁷ P. 881.⁸ P. 883.⁹ P. 884.¹⁰ P. 889.¹¹ P. 892.¹² P. 896.

“able ordinances, by which many were deprived of their franchises for the private profit of the guilds, but to the common damage of the people.” For which reasons they were for the future put under restraint in making such ordinances, “in disherison or diminution of the franchises of the king, or others; or against the common profit of the people.”

In an entry of the same reign upon the Parliament Rolls,¹ relative to the guild of tailors at *Exeter*, it is stated, that “the persons who had been admitted by the guild into their fraternity were of such number, and of such wild disposition, and so unpeaceable, that the mayor of the city could not guide and rule the subjects there, nor correct such defaults as ought by him to be corrected, according to his duty and charge. And besides they had made divers conventicles, commotions, and great divisions among the people; contrary to the laws and peace of the king, in evil example, and likely to grow to the subversion and destruction of the city, and to the good and politic rule of the same, unless due remedy was made by the king.” Whereupon the king was petitioned that the guild might be annulled.

Thus the documents collected to this period, establish that from the earliest institutions,² as long as the common law system of municipal government was maintained, the king's peace was preserved—his just prerogative was supported, and the privileges of the people were protected. But as soon as aggregate corporate bodies were introduced, contrary results ensued, and abuse and usurpation gained such an ascendancy, that even the Legislature had difficulty in restraining them;³ particularly the mischiefs resulting

¹ P. 897.

² P. 43.

³ P. 891, 898.

from the admission of *non-residents*, to the injury of the inhabitants ;—of which such striking proofs appear in subsequent periods of our history.

It was also in this reign that attempts to interfere with the elections of members to Parliament first occur ; and though they were not in the beginning extensive, yet in the succeeding reigns they became more general, and subsequently spread themselves to no inconsiderable extent over the greater part of the kingdom.

Notwithstanding the grants of incorporation to Hull, Plymouth, and the eight other places in the reign of Henry VI., in the succeeding reign of Edward IV.,¹ there were many charters granted which *did not incorporate* the places to which they were given. Thus the charters to the citizens of Norwich² and their *heirs*, which made the city a county of itself, did not incorporate it. The same remark is applicable to the confirmation to Bristol.³ Nor were the Cinque Ports, important as they were, incorporated at this period :⁴ and there was an express decision that Bury was not so.⁵ But the community of the inhabitants of Romney Marsh⁶ and the drapers of Shrewsbury⁷ are expressly incorporated with the usual corporate powers and names. As well as the city of Rochester,⁸ Stamford,⁹ Ludlow, Grantham,¹⁰ Wenlock,¹¹ Bewdley,¹² and Kingston-upon-Thames.¹³

But, under these circumstances, the *real effect* of charters of incorporation should be considered. Their object was merely to give to the grantees a general name by which they might sue and be sued, and take and grant lands ; and that they should enjoy all their rights, privileges, and

¹ P. 950.² P. 960.³ P. 961.⁴ P. 999.⁵ P. 1002.⁶ P. 965.⁷ P. 968.⁸ P. 966.⁹ P. 968.¹⁰ P. 970.¹¹ P. 1000.¹² P. 1002.¹³ P. 1005.

possessions by perpetual succession. Their effect extended only to these points;¹ leaving the constitution, privileges, and the *class of burgesses*, precisely in the same situation after the grant as before.

There is a striking instance, to show how little change was effected by the inhabitants being made burgesses, in the incorporation of the adjoining village of Southtown,² with Dartmouth: where, though the charter directs that the *inhabitants* of Southtown should be *burgesses* of the borough, it prescribes no formal mode of election or admission; but apparently leaves all connected with that point to the due course of the common law; only directing that there should be a *view of frankpledge*: the consequence of which would be that the *inhabitants* would be *sworn* at that court. The omission of any precise direction on this head, is strong to show that there was no other particular admission or election for the *burgesses* of Dartmouth, with whom these *inhabitants* were to stand on an equal footing.

The first case in which the courts of law³ laid down the modern doctrine, as to municipal corporations, occurred in the sixth year of Edward IV., 1466:—when it was held in the Common Pleas, that “if the king gave land in fee-farm “to the good men of the *town* of Dale, the *corporation* was “good. And so likewise where it was given to the bur-
“gesses, citizens, and commonalty,” &c.

This appears to be a strong position, and laid the foundation of corporations by *inference* or *implication*; upon which such important results were raised in subsequent times. It is true the doctrine was qualified in the manner we have before remarked;⁴ but afterwards the qualification was forgotten, and in modern law the principle has been

¹ P. 968.² P. 975.³ P. 1013.⁴ See before Introduction, xxxiv.—and post, p. 1021, 1023.

adopted generally. Hence the early charters of immunities of the reigns of Henry II., Richard I., and particularly those of King John, have in later times been regarded as charters of incorporation—a character to which they are by no means entitled; as the reader may be satisfied from the inspection of the documents themselves—or the charters—quoted in this work; to some of which reference has been made in this Introduction.

This, therefore, is the material point for consideration:—and it is one, upon which an opinion is stated with confidence—that the doctrine of inferring municipal corporations cannot, if fully investigated, be supported upon principle.

It is an obvious remark, that if these early charters could enure as corporations, the frequent and express grants of incorporation to Hull, Plymouth, and other places before noted, were unnecessary; particularly for some of them, which previously possessed charters of immunity.

The increasing importance of the House of Commons which commenced in the reign of Henry VI., continuing through those of Edward IV., Richard III., and Henry VII., arrived at a great height in that of Henry VIII. The necessities of the crown after the Reformation making the king dependent upon the supplies, the great authority of the state became in effect vested in the House of Commons. Consequently the king was desirous of obtaining an ascendancy in that assembly; and the courtiers vied in procuring influence amongst the members. On these grounds many efforts were made to control the elections. Letters were written recommending the electors to receive particular candidates, which in some cases were successful, and in others failed.

In the reign of Edward IV. it appears from the Paston

letters, that upon a doubt being entertained, whether a particular candidate would succeed upon such a letter it was suggested, in case of his failure, that “*there were many decayed boroughs in England¹ which ought to return members to Parliament, but did not; and that for one of those he might be returned.*”

Upon this suggestion Henry VIII. acted to some extent; but Queen Mary and Queen Elizabeth to a much greater; in consequence of which the House of Commons at last interfered and stayed the power of the crown in this respect; by inquiring into the grounds upon which some of those places returned their members to Parliament: and by those means put an effectual bar to such a course of proceeding. Nor after this inquiry were many boroughs added to the list of those who were enabled to send members to Parliament; the last exercise of the prerogative in that manner being in the case of Newark: since which no borough has been either created or restored by the crown.

During the same period corporations were also spreading themselves over the kingdom under the king's charters. Henry VII. and Henry VIII. both granted many of incorporation to boroughs in England, Wales, and Ireland; and when a check was given to the interference of the crown in summoning new places or restoring old boroughs, the only course which remained, was to obtain an ascendancy in those already existing.

The most secure mode of effecting this, seemed to be by placing—under charters of incorporation—the principal power in *select bodies*: and under the claim of *prescription* the corporations were said to have the exclusive right of electing their own officers: and, in some instances, also the members to Parliament.

¹ Page 1009.

Queen Elizabeth, with this view, granted charters to many boroughs; in the recitals of which it was stated, without any support from fact, that they had been incorporated from time immemorial, and had enjoyed many privileges by prescription. Of the *boroughs* and the *burgesses*, it might be true that they had existed from time immemorial; because we have seen boroughs in the Saxon æra, and in the reign of William the Conqueror: and charters were granted to some between that period and the time of Richard I. But of municipal corporations it was untrue; for there were none such either before or at the Conquest; nor were the charters given to boroughs before the time of Richard I., grants of incorporation.

These recitals, therefore, were untrue, and ought not to be relied upon, and as unfortunately they have been, both by the committees of the House of Commons and the courts of law, as supporting the groundless presumption of *corporations by prescription*.

Queen Elizabeth did not at the commencement of her reign make any alteration with respect to the boroughs. It does not appear to have been her wish or her intention to do so; and therefore her first grants¹ were merely confirmations—as to Huntingdon—Bristol—Poole—Marlborough, &c.

Indeed, that popular princess ascended the throne with so strong a national feeling in her favour, and the restoration and confirmation of the Protestant religion were so favourably received by the majority of the people, that any interference on the part of the crown with the elections would have been inexpedient and unnecessary. Reasonable doubts may indeed be entertained, notwithstanding what has been urged by many authors, whether any real control was exercised over the first elections.

¹ P. 1220.

This, however, is certain, that if any thing was meditated or attempted with respect to the boroughs at the commencement of her reign, it is not perceptible in the charters granted at this period, or in the parliamentary proceedings.

So precarious is popularity—and so uncertain even in this country is public opinion—that the queen did not long enjoy her undisputed ascendancy; nor the nation the blessings of undisturbed quiet. It was not till the fifth year of her reign, when, after an interval of four years, the necessity of a supply led to the calling of another Parliament, that six boroughs, Tregony—St. Germain's—St. Mawes—Minehead—Tamworth—and Stockbridge,¹—were summoned to send members to Parliament; none of them having done so for a long interval, and the greater portion not at all.

The members were, after a debate, allowed to sit, and the charters were to be examined for the purpose of ascertaining their right to be returned. All these places afterwards continued to send burgesses to Parliament; but under such circumstances as have called for particular remark.

It must be borne in mind, with reference to the subject of our inquiries, that the question—who were to return members to Parliament? which by the writ was cast upon the *burgesses*—was in fact the same question as who were the burgesses? and therefore, though the elective franchise has been settled by the Legislature, the investigation as to the municipal rights, which remains open, is to be illustrated by a reference to the parliamentary decisions.

In all these six places the right of election was exercised by the inhabitants paying *scot* and *lot*; in most of them it was limited; in some by express decisions, to the *householders*. In all of them the court *leet* existed, and was in the full exercise of its powers.

¹ P. 1223.

In *Tregony*,¹ the absurd right of *potwallers* was introduced; in *St. Germain's* and *St. Mawes*, it was limited to the *householders*. Neither of these places have been incorporated.

In *Minehead*,² the burgesses were determined to be the *parishioners*—the right of the *pot-boilers* was attempted to be set up, but negatived. It was incorporated—its corporation was dissolved; upon which the *constables*, the common law officers appointed at the court leet, became the returning officers—and *Minehead* continued to return members notwithstanding it ceased to be a corporation.

*Tamworth*⁴ was a borough by prescription—it was incorporated in the third year of Queen Elizabeth—the right of the *select body* of the corporation, consisting of the bailiffs and twenty-four capital burgesses, was once established against the "*populace*;" but at a subsequent period it was superseded by the right of the inhabitant householders—and an attempt of the *freeholders* to vote, was also negatived. The right of the corporation, excepting only the select body, was never insisted upon: but the common law right of the *inhabitant householders*, paying *scot and lot*, was in substance established:

As to *Stockbridge*, the right has also always been exercised by that class; and all its municipal regulations and government have been transacted at the court leet.

Thus far, therefore, nothing had been either directly or indirectly effected by Queen Elizabeth contrary to the spirit of our early institutions: and even the corporations which had been created had not interfered with the general principles of the law.

But when it was ascertained that no more boroughs could be summoned, and the crown was driven to seek for other

¹ P. 1226.² P. 1227.³ P. 1228.⁴ P. 1230.

modes of controlling the then wayward spirit of the Commons, nothing remained but the attempt to bring the existing boroughs under some obedience. And this was essayed by means of the corporations.

The charters of Elizabeth, subsequent to this period, commence with recitals that the boroughs had been anciently incorporated; by which every *usage* as to the municipal corporations which had existed for any length of time, was sought to be supported under the plea of *prescription*.¹ The charters of Poole,² and East Looe,³ in the 10th year of this reign, afford specimens of this description.

In the 13th of Elizabeth a new Parliament⁴ being assembled, it appears that nine other places, which had not returned members in the preceding Parliament, had been summoned, and had sent their representatives. Upon their validity being mooted in the House, it was determined they should sit, "for the validity of the charters of these towns "was elsewhere to be examined."

Some of these places had before returned members, but the greater part had not. In *East Looe* the greatest usurpations were established. In *Fowey*⁵ and *Cirencester*⁶ the right of election was in effect fixed in the *inhabitant householders*. But in *Retford*, the *non-residents* were decided to have a right to vote;⁷ or in other words, the *non-residents* were held to be *burgesses* of that borough—but on a subsequent occasion their right was denied.⁸ The exclusive right of the *eldest sons* was also set up,⁹ but negatived by a division in favour of *all* the sons: though afterwards the right of the *eldest* was again referred to,¹⁰ and that of the non-residents negatived.

5. In *Queenborough* non-residents were introduced, con-

¹ P. 1249.

² P. 1239.

³ P. 1255.

⁴ P. 1253.

⁵ P. 1281.

⁶ P. 1282.

⁷ P. 1284.

⁸ P. 1290.

⁹ P. 1291.

¹⁰ P. 1294.

trary to the express words of the charter. *Freemen* were treated as the *burgesses*, notwithstanding it was not incorporated; and although it subsequently received a charter of that description in the reign of Charles I., that fact does not appear in any manner to have altered the character of the *burgesses*, or the rights or privileges of the borough, except by superadding the usual corporate powers.

6. As to *Woodstock*¹—which first appears as a *borough* by returning members to Parliament in the reign of Edward I.—a committee of the House strangely decided that the right was in the *freemen*; although the writ under which it first returned, required the members to be elected by the *burgesses*, who appear to have been the *inhabitants*, and it was not incorporated till the reign of Henry VI.

7. *Christchurch*² was a *borough* by prescription, and had previously sent *burgesses* to Parliament; and the mayor was elected at the *court leet*.³ Its corporation, if it had any, was in 1720 dissolved.

8. In *Aldburgh*, in 1689, the year after the Revolution, country gentlemen, farmers, and others *not inhabiting* in the borough, *nor paying scot and lot, nor bearing any charge of the borough*, were made *free for the purpose of the election*, contrary to the usage and custom of the borough, and contrary to every principle of the constitution.⁴ And though a committee of the House of Commons thus established the right of the non-residents, and it was confirmed about 20 years afterwards, yet within five years, this error was corrected; and the right of election was determined, consistently with the general municipal law, and sound parliamentary principles—to be in “the *burgesses resident* within the borough.” Thus properly uniting the municipal and parliamentary right in the same class.

¹ P. 1301.² P. 1304.³ P. 1305.⁴ P. 1307.

9. As to the burgesses of *Eye*, the right of parliamentary election was exercised by the *inhabitants* paying *scot* and *lot*: but a second class of persons were also allowed to vote, namely, the *freemen* of the corporation. This was obviously objectionable, because there could not be two classes of burgesses; and if only one of the two were to be adopted, there could be no real doubt but that the inhabitants paying *scot* and *lot* were the preferable class. But the proper mode would have been to have reconciled the two, by deciding that the *free inhabitants* paying *scot* and *lot*—that is the householders, doing their proper suit at the court leet—should be considered the “*burgesses*.”

One result produced by summoning these nine places to Parliament, was the uncertainty introduced by these varying usurpations with respect to the persons who ought to be *burgesses*.

The influence which prevailed over the boroughs¹ at this time, is apparent from an order made by the common council of *Colchester*, that Sir Francis Walsingham should have the nomination of their burgesses to Parliament.

But this strange order appears to have been the act of the *common council*, who had usurped the privileges of the *community*. In many other respects the rights of the burgesses of this place were left untouched; and their class is pointed out by the clearest definition in the constitutions of the borough. They are described as “*house-holders dwelling in the borough, sworn to the king, and paying and bearing scot and lot;*” excepting, amongst others, children not householders—persons who had been convicted of offences—and those receiving or asking relief:—a description, and exceptions, in every respect conformable to the common law.

¹ P. 1346.

Twelve other boroughs were also newly summoned to Parliament in this reign.

1. *Callington*¹—the *inhabitant householders* paying *scot and lot*, voting as the *burgesses*.

2. *Beerlston* was submitted to the influence of the lords of the borough,² as soon as it returned members to Parliament. At one time it was contended that the *freemen* were the *burgesses*. Subsequently, without any evidence to support it, but because it was asserted on one side, and not contradicted on the other, the *freehold tenants*, holding by *burgage tenure*, were held to be the *burgesses*.

3. *Corfe Castle* was also the object of influence, as the reader may perceive by the facts stated in the body of the work; and although there seems to be no other ground for this place being considered to be a borough, except that it had a *court leet*, the freeholders or suitors at the *court baron*, including *non-residents*, appear to have been treated as the *burgesses*.

4. *Newton*³ has not been incorporated, and upon nearly the same grounds as in *Corfe*, *non-residents* were included in the right of election.

5. *Clitheroe*,⁴ was put nearly in the same predicament, by the right of election being attributed to the *freeholders*. But, from a careful consideration of this case, and the general law, it will be apparent that they should have been the *resiants*; owing their suit at the *court leet*, where they ought to have been presented by the *jury*, and *sworn* and *enrolled*:—and not the *tenants*, presented by the *homage* at the *court baron*, which was the proper court for the *freeholders*; and where the proceedings would have been altogether of a different description. In consequence of this error the most absurd and inconsistent usages appear to

¹ P. 1347.

² P. 1348.

³ P. 1354.

⁴ P. 1355.

have crept into this borough; and the strangest notions were entertained by succeeding committees who sate upon its elections. Had they confined themselves to the proper point of inquiring who were the *burgesses*, they could not have even heard the positions which were contended for before them; but would have been irresistibly drawn to the conclusion that the real burgesses were the *inhabitant householders* paying *scot and lot*;—who as *resiants*, owed *suit* and service at the *court leet*; and as of *free condition*, ought there to have been *sworn* and *enrolled*.

6. *Bishop's Castle*.¹ When the true question is considered, who were the *burgesses* in these boroughs,—which seem to have been all created for one purpose, and were all originally intended to be the same—it is extraordinary to observe, in the decisions of the courts of law and of the Houses of Parliament, the variety of descriptions which have been adopted for them. As to the five preceding places—in the first, the *burgesses* are described as the *inhabitants paying scot and lot*—in the four others, as the *freeholders*, *resident* and *non-resident*. In *Bishop's Castle* they were assumed to be the *corporators*, but limited to the *residents*.

7. *Harwich*² was not incorporated till some time after it had returned members to Parliament. Contrary, therefore, to the possibility of right,—to the plain words of the charter—and the very import of the name—the *capital burgesses*³ created by the charter, and obviously only a part of the burgesses, were held to be the body, who according to the writ ought to make the returns as the *burgesses*.

8. In *Newtown*,⁴ by another variety, the *burgesses* were held to be the persons who had *borough lands*, though there was no evidence to support such a decision.

¹ P. 1365.² P. 1365.³ P. 1473.⁴ P. 1367.

9. *Lymington*, returned members to Parliament before it was incorporated, which was not until the reign of James I. It was nevertheless held to be a corporation by prescription; upon which assumption was also established the inconsequential conclusion that the *select body only* were the *burgesses*.

10. In *Whitchurch*¹ the *burgesses* were, by the *agreement* of the parties, held to be the burgage tenants; with some ridiculous and unfounded limitations as to the quantity of the land, and the ancient foundations.

11. *Sudbury*² affords a curious instance, of an express determination, that the *burgesses* had a right to vote *without any admission in form to their freedom*—a position so contrary to the general principles of the ancient, as well as the modern practice of our law, that it would be difficult to account for it, were it not for the variety of usages and customs which seem to have been so strangely introduced into all boroughs. All the inconveniences and intricacies resulting from the corporate rights were introduced at different periods into the borough of Sudbury. The common law right of freedom by *birth* and *service* was mystified with all the distinctions founded upon modern usages;—*non-residents* were also allowed:³—and the select body of the corporation claimed the right of admitting whom they thought fit, without any previous title.⁴ On the first occasion they admitted no less than 170; of whom 150 had no right of any kind; at the same time excluding, on trifling pretences, many of those who were considered qualified. The illegal and irregular conduct accompanying these proceedings, will be worthy the attention of the reader.

12. In *Haslemere*⁵ the burgage tenants were held to be the *burgesses*; but it will be seen that the proceedings in

¹ P. 1372.

² P. 1373.

³ P. 1378

⁴ P. 1378.

⁵ P. 1380.

that borough were attended with such circumstances as most justly roused the indignation of the court before which they were produced in evidence;¹ and called for the severe animadversions of the judge who presided at the trial.

13. *Richmond*² being *incorporated* in the 19th of Queen Elizabeth, was summoned to return members in the 27th year of that reign. It had also a *court leet*. Yet the *burgesses* were not, either according to the common law held to be the *inhabitant householders, paying scot and lot*; nor, according to the modern doctrine, to be the *corporators*:—but without any evidence, they were assumed to be the *burgage holders*.

Thus the reader will find that confusion, by the means of these varying usages, was superinduced, not only upon the ancient boroughs, but also on those which were created, restored, or summoned, in modern times; and nothing has been left more uncertain than, Who were the *burgesses* of the different boroughs? though, if the ancient history of our institutions had been regarded, nothing could be more plain, simple, or certain.

The full effect, however, of the new incorporation of boroughs did not immediately succeed these acts;—it was some time before the results followed; and still longer before their consequences could be recognized.

Nor would the charters alone have produced the effects, had they not been aided by the support of the law; and carried even beyond their original intent by those who were authorized to act under them.

The first important step was the sanction given by the judges, in the celebrated *corporation case*,—in the reign of Elizabeth—to the validity of *elections* and the binding effect of the *bye-laws*, made by the *select bodies*; by which the

¹ P. 1823.

P. 1683.

varied *usages* in the different boroughs have been mainly supported. This case has, unfortunately, been adopted as an authority; and its effect has been considerable; though being only an opinion, given by the judges to the council, and not a judgment open to appeal or correction by writ of error, it is not entitled to the authority of a judicial decision.

In the next reign, some slight check was given to the influence of the charters and the usurpations of the corporations—at least as far as related to the parliamentary privileges of the burgesses,¹—by the decisions of the celebrated election committee, in the 23rd of James I., whose proceedings were reported by Mr. Sergeant Glanville; one of the resolutions² in the Winchelsea, Chippenham, Dover, and Newcastle cases³ being, that no bye-law could vary or control the right of election; and that the king's charter was equally inoperative for that purpose.

At the same time, this committee revived, as far as lay in their power, the pure principle of our municipal institutions, by in effect declaring that “of common right the burgesses were ‘the inhabitant householders’ resident, paying scot and lot.” Which definition, though somewhat tautologous, yet in substance contained all the qualifications required by the common law to make a complete burgess; the swearing and enrolment at the court leet being the necessary consequence, by the general law, of a person being an inhabitant householder within a borough.

Thus would the constitution have been practically restored, had this wise determination been generally acted upon. But, unfortunately, the troubles and dissensions of the succeeding reign drove the great men who concurred in this decision from their even course of legal and practical

¹ P. 1546.

² P. 1549.

³ P. 1556.

reform, to more violent acts of party and faction ; which produced an opposition to their measures and opinions, even when correct. Hence this legal, constitutional, and practical correction of the abuses then prevalent, slept for a long interval unheeded and almost unknown ; and it was not till nearly a century after the days of fanaticism and violence had passed, that it was again brought to light, and by some persons, at least, deemed to be of little less importance than many of the provisions of the great Charter of our Liberties.

During the succeeding reigns of Charles II. and James II. not only was this sound principle totally disregarded, but direct attacks were openly and unhesitatingly made upon the charters and privileges of the corporations, which it will be our duty to detail in the progress of the work.

The interference in the reign of Elizabeth, and James I., by charters of the crown—the decisions of the courts—and the acquiescence of the people—had merged all the borough privileges and jurisdictions in the general notion of *corporations* ; and as by those means all their rights were brought under the influence and control of the crown, the subsequent attack upon them was made comparatively easy.

On the Restoration, the statute passed for the correction of the corporations afforded ready means for that attack, and a pretext for every species of usurpation.

Extensive use was made of the opportunity ; the old members and officers of the corporations were displaced—ministers of the crown—officers of state—and *non-residents* were substituted : and from the proceedings upon this statute, it was obvious that no corporation had any chance of continuing its existence, but by a submissive compliance with the wishes of the king.

Some places justly called down punishment on them—

selves. The violent conduct of the city of London rendered it obnoxious to the king, and occasion was therefore taken to call upon the citizens to show by what authority they claimed to be a body corporate, and to exercise the privileges and authority which were specified in the Information.

As in fact London had never been incorporated, there is no doubt that it had no authority to assume that privilege to itself; and therefore to that extent the judgment against it was certainly according to law.

But the proceeding was coupled with party virulence and political malice, which gave a most unfavourable complexion to the case. And it appears to have been altogether overlooked, that though the city of London was not incorporated—which in truth was a very immaterial part of its privileges—yet it was the most ancient exclusive jurisdiction in the country; and all the immunities and authority connected with that jurisdiction, and with its character as a borough, were its undoubted right, and stood upon as secure a ground as the crown, or any title under the law.

The same may be said of all the other *boroughs*.

However, the war was against the corporations; and after the success of the *London Quo Warranto*, the king sent his officers into all parts of the kingdom to terrify the corporations, by the threats of similar legal proceedings, to give up their charters. The greater portion voluntarily surrendered them, through the agency of the *select bodies*, on the promise of having new grants from the crown:—against those who were refractory, proceedings were instituted. So that at this time the *borough rights, which by general misconception and practice had been assumed to be identified with the corporations, were, by the acts of the corporations, and the surrender or seizure of the corporations, submitted entirely to the mercy of the crown.*

Many of these surrenders were brought in, particularly those from the West by Lord Bath, just at the time of the death of the king; and it remained for his successor, James II., to act upon those documents.

He fully pursued the plan of his brother, to bring the corporations under his control; and therefore, in the grant of new charters in the place of those which had been surrendered, introduced, as Charles II. had done in all those he granted, the clauses which gave the whole power to the select bodies; and made them all removable at the will of the crown.

That this was the great object of all his measures connected with the corporations, and that these acts were felt by the country as the great grievance of that reign, may be collected from this fact,—that the king's last effort to restore himself if possible to the good will of the nation, was the issuing of his celebrated Proclamation for the restoration of the corporations—annulling all the surrenders which had been made, and reviving the ancient charters.

Under these circumstances, it might be expected that William III., ascending the throne to correct, as it was supposed, the violent and unconstitutional acts of his predecessor, would have done all in his power to obviate these abuses. But the fact is upon record, that some of his warmest supporters were the first to revive and insist upon the rights of the select bodies; and more was done during this reign to confirm the usurpations of corporations—the extensive rights of common councils—and the interference of *non-residents*, than in any other period of our history.

Dr. Brady, who was about the court, wrote his biassed and partial work in support of these abuses; and it was immediately followed by a decision in the House of Commons in favour of the exclusive right of the select body of

Banbury, against a prior decision to the contrary, upon the charter of *Abingdon*; the substance, and almost the words of which, were precisely the same; but the author misrepresented the charter of *Banbury*, and thus procured a decision in favour of the right he advocated.

From this period, the direct interference of the crown altogether ceased: the indirect interference has gradually lessened; till in modern times it has become almost extinct:—and no influence can be less, nor less exercised, than that which belongs to the crown.

In the same manner the prerogative of granting charters was also called into action to a smaller extent in the succeeding reigns. Queen Anne granted only six charters—one to *Yarmouth*, making some slight alterations in the elections; one to *Leicester* giving some additional justices, with a grant of fairs, &c.; to *Bewdley* a charter of restoration, which was afterwards annulled; and to *Wareham*, *Salisbury*, and *Bristol* charters of incorporation.

George I., granted only two—one of incorporation to *Henley-upon-Thames*; the other to *Tiverton*; the latter being necessarily required in consequence of the accidental dissolution of the corporation.

George II. granted seven.¹ Those to *Lostwithiel* and *Lyme*, authorizing an oath to be administered to the coroner—one to *Radnor*, being requisite from their incapacity to elect their annual and other officers—that to *London* relating only to the justices of the peace—to *Weymouth* a mere explanatory charter—one to *Maidstone*, granted in consequence of the dissolution of the corporation—and the last to *Liverpool*, explanatory as to the justices of the peace for the borough.

¹ 1. *Lostwithiel*,
2. *Lyme*,
3. *Radnor*,

4. *London*,
5. *Weymouth*,

6. *Maidstone*,
7. *Liverpool*.

During the 59 years which George III. reigned, there were only thirteen charters granted.¹ The first to *Colchester* was in consequence of the old corporation being dissolved—the second to *Winchester*, a grant of a portion of the fee farm—the third to *Bath*, and the fourth to *Carmarthen*, were charters of incorporation—the fifth to *Exeter*, granted additional justices of the peace, &c.—the sixth to *Helston*, incorporated that place—the seventh to *Saltash*, was in consequence of the prior corporation being dissolved—the eighth to *Northampton*, and the ninth to *Bodmin*, were both incorporations—the tenth to *Weymouth*, one of explanation—the eleventh to *Maldon*, in consequence of their former grants having been forfeited—the twelfth to *Lampeter*, a charter of incorporation, and regulating the mode of swearing the officers and burgesses, in consequence of the former grants being lost—the thirteenth to *Lancaster*, a charter of incorporation.

In the reign of George IV., only three charters were granted. One to *Kidderminster*, to increase, in consequence of the increased population, the number of the magistrates—the second to *Stafford*, in consequence of the corporation being dissolved—and the third to *Reading*, for the same reason as that of Kidderminster, and to give facility to swearing the annual officers.

During the reign of his present majesty, one charter only has been granted, and that to the borough of *Wigan*, for the purpose of giving them additional magistrates.

Under these circumstances, nothing can have been more unexceptionable than the exercise of the prerogative of the

1. Colchester,	6. Helston,	10. Weymouth,
2. Winchester,	7. Saltash,	11. Maldon,
3. Bath,	8. Northampton,	12. Lampeter,
4. Carmarthen,	9. Bodmin,	13. Lancaster,
5. Exeter,		

crown in granting charters for more than the last century ; and no considerate person can think that this important function of the executive power—so material, when well regulated, to the good government of the country—so gracious, when exercised, to the subject—and so beneficial to the crown, as one of the best links to unite the governed with the head of the government—can be placed in better hands than those of the King ; and that to his interference, in the true spirit of the constitution, the people may look with confidence for the correction of the abuses which have progressively crept into corporations.

The real complaints against the prerogative, are now only matters of history—they have long since passed away—and no one who forms a due estimate of the present division of the power of the state, can for a moment retain the chimerical notions of danger from the power of the crown, which in the last century were, for the interested purposes of a few, so constantly put forward.

It is not, therefore, to the crown that the continuance or the confirmation of the abuses which had commenced with the Tudors, is to be attributed ; it may with more propriety be laid to the account of the House of Commons—the decisions of the courts of law—and the people. }

The first, in the reign of William III., passed the act compelling the sheriffs to make the returns from the elections according to *the rights which had last been determined by the House of Commons.* By which means the varying and anomalous *usages* of the different boroughs, and the contradictory decisions of committees, were sanctioned and confirmed.

The House of Commons also—by its resolution—supported the former decisions, however irreconcilable with the charters or the principles of our institutions ; and, in some

instances under the general name of "burgesses," introduced new varieties, according to the agreement of parties, or the absurd *usages* of the places which were brought before them.

The courts of law, relied upon the few early cases to which we have referred; and the extra-judicial opinions in the reigns of Elizabeth and James; and they fell into the same course which the House of Commons and the legislature had taken, adopting the same rules, by which they avoided a discrepancy which might have existed injurious to the character of both, as well as detrimental to the people. The courts therefore upheld the same principles—supported usage—maintained the select bodies—sanctioned the non-residents—confirmed numerous bye-laws, not in accordance with the charters, or with each other; but giving a different constitution to every different borough;—and as the greatest and worst innovation of all, gave the stamp of judicial authority to the doctrine of the arbitrary admission of burgesses by the corporations,¹ a principle which had not before been expressly sanctioned by legal decisions.

It must, however, be allowed, that many of the errors into which both the Committees and the Courts were led, arose from individual cases being brought before them, upon which they were called upon to decide by such light as the parties thought fit to afford them; and they had often nothing to guide them but the *usages* of the single borough, upon the constitution of which they were required to determine.

Had a fit opportunity been afforded them of examining the whole system at one view—by having the early laws—the charters of different periods—and the general practice

¹ R. v. Bird, 13 East, 365.

of all the boroughs brought before them—the task would not have been difficult to separate the good from the evil—to maintain the ancient laws—to uphold the real intention of the charters—and to preserve the uniformity of the boroughs. If they had possessed such an opportunity, highly culpable would they have been if they had not availed themselves of it; but, as the case at present stands, no blame can be attributed to them, though it is necessary historically to point out the great part which they have unadvisedly taken in permitting the usurpations which have thus grown up in the state.

The people also—to a certain extent—have been led into their usurpations by the examples and authority afforded them. Many have erred in ignorance, or from precedents established by others. At all events the present heads of the corporations have only followed in the steps of their predecessors. But if there are in any of those bodies persons, who, knowing better things, have for their own private advantage, abused the rights and privileges of the boroughs to which they belong, on them the full force of censure must deservedly fall.

During the reigns of Queen Anne, George I., II., III., and IV., the abuses to which we have referred were fully maintained—select bodies—common councils—their bye-laws—and non-residents were supported. *Freemen* were substituted for “*burgesses*,”—and the latter name was applied to *burgage-tenants*—*freeholders*—*potwallers*—and *inhabitants* without any other qualification. The *court leet* was neglected—its proceedings disregarded or misapplied. Instead of them *courts baron* were brought into a prominent situation in the municipal government of boroughs, for which they were never intended.

Trade, and the *companies and liveries* connected with

it, particularly in London,¹ were more interwoven with the rights of burgess-ship, than the original constitution of boroughs would justify : and the *unrestrained admission of freemen as burgesses*, which was declared to be lawful, laid all the municipal privileges and jurisdictions at the feet of those of whatever party who happened to possess the influence necessary to secure the admission of their friends.² Hence, in some places, a sufficient number of *non-resident honorary freemen* were admitted to overawe or neutralise the votes of the real *burgesses* ; making in this manner the important functions of the separate *exclusive jurisdictions* of boroughs, not the means of local government, as they were intended to be, but the tools of party violence and private intrigue.

Such are the varying, contradictory, and anomalous meanings attributed to the word "*burgess*." Such is the intricate and involved system which has grown up from the progressive effect of gradual abuse and usurpation.—How strongly is this contrasted with the simplicity of our ancient institutions !

The detail of the facts and documents collected in the body of the work, is unavoidably long,—even the abstract of them given in this Introduction, occupies no small space. But if either the one or the other should prepare the mind of the reader to discard his prejudices, and forget the bias which habit, and a long contemplation of the modern state of things, may probably have produced, the whole might be summed up in a small compass.

¹ See the Stat. 11 Geo. I., c. 18.

² See the Durham Act, 3 Geo. III. ch. 15, and the numerous cases of this kind—particularly the recent cases of Nottingham and Leicester.

The short statement, omitting all unnecessary distinctions, is this: Originally the country was divided into shires and boroughs—the people into bond and free; the former had few if any civil rights—the latter enjoyed all the privileges of the state, and bore all the burdens. They submitted themselves to the law by taking, in the public court, before the officer of the king—whether shire-reeve or portreeve—the oath of allegiance. They gave *pledges* for their good conduct; and they were *enrolled* for the sake of publicity—for the security of their privileges—and for the imposition of the public pecuniary payments of *scot*, and the performance in due rotation of the public personal duties of *lot*. As neither of these were, or could be, imposed on any but *householders*, they only—being *free, sworn, and enrolled*—were, in the *counties* at large, the *liberi et legales homines comitatús*: and in the *boroughs*, the *burgesses*.

As long as the distinction of the *bond* and *free* continued, the freemen were denoted by birth, marriage, and servitude. When that distinction ceased, those rights lost their substantial importance, and ought to have been discontinued. In point of practice in the *counties*, and in many of the *boroughs*, as well as in their charters, the inhabitants generally (subject to their being *householders—sworn, enrolled, and paying scot and bearing lot*) were substituted for the old and more limited class of *freemen*.

Subject to that change alone, the ancient system would have continued, had not the introduction of *municipal corporations* in the reign of Henry VI. coupled with the partial cessation of the court leet in the reign of Edward IV.—and the consequent prevalence of the *court baron*—laid the foundation of the subsequent usurpations. By the doctrines from time to time applied to the *artificial*

creations of corporations—the control of the *select bodies*—and the *capricious election* of corporators and *non-residents* were gradually introduced. Those abuses arose from slight beginnings in the reign of Elizabeth—increased in the reigns of James and Charles I.—were carried to the greatest extent by the violent acts perpetrated in the reigns of Charles II. and James II., and were finally confirmed in the time of William III. and Queen Anne: and have since been acquiesced in by passive submission.

It is not necessary here to repeat the means by which these gradual usurpations have been confirmed—they are occasionally glanced at in the progress of the work. But it may be safely said, that they never could have arrived at their present height had it not been for the co-operation of the people themselves. Truth requires this declaration, and it ought not to be withheld—as it is in no small degree involved in the consideration of the remedy.

It will naturally be asked, what is to be done?—how are these evils to be obviated with safety? The answer is obvious. Retrace the progress of abuse—put an end to the evils which have sprung out of modern usurpations—restore the ancient simplicity of the municipal institutions, retaining of the present system such parts only as experience has shown to be practically useful; and in doing this let the people co-operate in correcting the evils they assisted to produce.

But it will be further asked, how should this be done? This consideration must, for a short space be deferred, till some of the objections which may be urged have been cursorily answered.

It will be said that the system which suited our ancestors, will not suit us. Why should this position be assumed? To *swear allegiance* to the king and submission

to the law is the first social duty : and in some form or other has been practised in every nation, civilised or uncivilised. To be *enrolled*, for the purpose of being known, is the common course of all human societies, from the greatest congregations to the most insignificant club—to share the *privileges* and bear the *burdens* is a system of reciprocity as much connected with the highest principles of justice and equity, as it is level to the meanest understanding, and consistent with the utmost liberality. Why is this to be assumed as unfit for modern Englishmen ? Where is the person bold, or conceited enough to suppose that his unassisted wit can devise any thing new, which will be a better substitute for that which was practised by our ancestors, and has been departed from only by usurpation and abuse, as the historical detail establishes.

For ourselves, we venture not by speculation to seek for better things than our ancient constitution—we are satisfied with that which history and experience point out as fitted for our country and its inhabitants. We dare not suggest novelties : we seek only to restore, in its purity, that which has already existed.

Another objection will be made, that it is *impracticable*. This directly leads to the question of the *means* by which it is to be effected.

The first essential point to be established is, that the principle of the capricious selection of burgesses should be renounced, as unfounded in law.

The next renunciation should be of the equally unfounded right of the select bodies to make bye-laws affecting the constitutions of the boroughs. By this alone can any regular system be restored—the charters uniformly construed—and the just prerogative of the crown placed in its proper position.

These preliminaries considered, the task of adjusting the existing bodies is comparatively easy.

The *boroughs*, (which have in modern language mistakenly assumed the name of *corporations*) divested of these abuses, are capable of being made still the greatest blessings to the country; as they are the necessary consequence of great masses of population collected in particular spots; for the good government of whom these institutions afford the readiest means. And, in that view—and that alone—as local *separate jurisdictions*—the boroughs ought ever to be considered.

The confirming, improving, and simplifying these institutions according to the ancient principles, should be the practical object of the statesman, the patriot, and the legislator.

The means of effecting this—after the correction of the leading abuses of the arbitrary selection of burgesses—the varying bye-laws—the anomalous usages founded upon them—the exclusive power of the select bodies—and the privacy of the proceedings—for which the principles of law are sufficient—will be to revive the court leet. In that court the king's peace is to be preserved—the laws administered—public nuisances prevented and removed—and the rights of the people—whose court it has been emphatically called—asserted and protected.

At that legally constituted assembly the inhabitant householders, *paying scot and bearing lot*, ought to attend twice in the year, at Michaelmas and Easter; the *steward*, who is a sworn judicial officer, should preside; and a jury should be impartially impannelled:—serving in their proper turns; and selected, as they might be, without the possibility of packing.

One of the first duties of this body would be to present to the steward every *inhabitant householder*, *paying scot*—

which would be denoted by the public rates—and capable of bearing *lot*, which would be indicated by the fitness to perform all the public functions of constables, overseers, churchwardens, jurymen, and all the other offices of the place—including the liability to be summoned by the king's presiding officer to attend the *posse burgi*, if riot or other circumstances should make it necessary, for the preservation of the peace.

The persons, thus presented in a list to the steward would be sworn by him in the presence of the mayor, the aldermen, and other superior officers of the borough, to keep their allegiance to the king and the law; and having done so would be publicly enrolled as burgesses, and their names recorded as those who were to share the privileges and bear the burdens of the borough.

It should here be observed, that by these simple means a *list* will be formed—without expence,—publicly—and before the people of the place—of those who will have the conflicting considerations of benefit and burden, to incline them on the one hand, to desire, if properly qualified, to be placed upon it; and on the other, to refrain from a wish to be so, if the burden would, from their circumstances or station in life, operate as a greater inconvenience, than the privilege would be beneficial: considerations which would also have their proper effect on the jury, who would determine upon their oaths, and under the responsibility of their character amongst their neighbours.

To expect that any list, which is not produced by the correcting influence of the opposite principles of benefit and burden, will be even tolerably correct, is the most improbable speculation which theory ever adopted; and it was never attempted till recent times. What has been the

real success of the experiment, must be referred to those who have had an opportunity of experiencing its results.

As to the *jury* of the court leet, it should be remembered that—besides the obligation of their *oaths*, and the powerful influence of *character*—as they would be changed at every court, there would be no temptation to any indirect practices; for whatever was done amiss by one jury, would in six months be corrected by another; and as after the first list has been formed, the jury would merely have to make the alterations in it, which change of residence or circumstances might in the intervals of the courts have produced, their labour would be small, and their field of action would be circumscribed.

In the mean time, by the operation of this system, the people will in effect be taught to govern themselves, and will be instrumental in administering the law. The advantages of this, will be duly estimated by those, who are acquainted with the manners and habits of this nation, and have felt by experience, the effects produced upon the persons who are from time to time called upon to assist in the dispensations of the law. And without hazarding too sanguine conjectures, it may be anticipated that this mode of performing the necessary acts of swearing and enrolling the burgesses, may be made an effectual means of binding the people together in one solid union, as the law of William I. describes it under the same system, “*ut fratres conjurati* ;” and that it may at the same time improve the social and moral condition of the people, by making them better men and better subjects, and thus become an efficient source of sound government.

Regulations will be necessary for the election of presiding and other officers. But if they are all brought to the same plain and simple principles, and transacted

at the same court, as in ancient times, they would all admit of the same easy solution, and be followed by similar results.

It has ever been, and probably ever will be, the practice of large bodies of men, from a principle of necessity, to confide their interests to a few. This, in truth, produced the common councils of old; and the modern system of committees:—*mutual confidence*—without which the affairs of mankind cannot be conducted—being the broad basis upon which they all depend. Such bodies must, therefore, always be selected: and to make them useful, they must be to some extent permanent. Experience seems to have sanctioned the number of 24. That number of persons should be selected, not capriciously, but according to their real recommendations and qualifications, by the jury—those existing should continue—the vacancies only, to complete that number, being filled up by the jury.

As permanency of situation, and uniformity of conduct, would be necessary for such a body, a small portion only might be periodically removed.

Out of the common councilmen, or those who have served that office, should alone be elected the aldermen; and as their functions of local government are more important than those of the common councilmen, their offices should be permanent, as a fixed body for the government of the borough: and as they would thus become better acquainted with the requisites for their office, they should have the power of selecting their own body.

The mayor, or presiding officer of the king, should necessarily be selected with care and caution, as holding a highly responsible situation; for which reason, the aldermen, the permanent officers of the borough, should

have the power of nominating three or more of the common councilmen, out of whom the burgesses at large should, if a poll were required, have the power of selecting one : or if not, or in the case of equality of votes, the jury should present one of those to the steward to be mayor.

All of these acts should be done, and the oaths administered to the respective officers, in the *court leet*, in the presence of the *steward*—the *king's presiding officer* as the judge—and of the jury as the suitors ; who ought at all times to include in their presentments all irregularities committed by any of the functionaries in their proceedings.

The public business of the borough—the settlement of their accounts—and other affairs—should be publicly transacted, and announced before the same court : and thus just suspicion and jealousy would be destroyed ; and all who desired it would have the full means of certain knowledge and information upon the subjects which concern them.

These regulations are in the pure spirit of our ancient institutions : of which the best test is this fact, that *these measures may be effected under the law as it now stands*—and in this respect, as before observed, the remedy is in the hands of the people themselves.

Every borough has a *court leet* and a *steward* to preside at it. The court may in some instances have been discontinued : but it is the most clearly recognized principle of the law, that being for the public good, it cannot be lost by desuetude ;¹ and therefore it may be revived ; and the court may be held—the steward may preside—the jury may be chosen—the list of burgesses may be presented—and the officers may be elected.

¹ See *Rex v. Havering attē Bower*. 5 Bar. & Ald. 691.

But it may be said, other usages may have existed ; and the charters of the crown may interfere with these arrangements.

The answer is, that as the modern usages are only supported by the modern law, so will that law allow the corporations at present existing to alter those usages by *bye-laws*.

And as to the charters, if properly construed, it will be found that very few of them oppose these regulations.

As to the admission of the burgesses, whether they act under usages or charters, under the present practice and law, *they may elect into their bodies whom they think fit*. If, therefore, any difficulty should be made in this respect, the same course should be adopted of holding the court *leet*; the *jury* should *present* those they find duly qualified: the corporation being duly assembled, at the same time, should elect as members of their body, those whom the jury have presented: and thus the proceedings may be reconciled even to the modern law and practice.

As to the election of the officers—if the charters should really, and in express words, appear to militate against this course of election — which, for the reasons given before, will be but in few instances — then application might be made to the crown for such an alteration of the charters as should be found necessary. No doubt the crown, upon that principle of forbearance which has ever guided the House of Brunswick, would not lightly or without due consideration interpose. But should Parliament on such grounds address the Throne to give effect to these wishes and intentions of the nation, there is no reason to doubt that His Most Gracious Majesty, would readily exercise his undoubted prerogative for so beneficial a purpose. And thus would these important

reforms come back into their proper and legitimate course, being founded upon the petitions of the people, through Parliament, and effected by the gracious exercise of the prerogative of the crown.

But it may be said, that the people will not bear their part in these important proceedings:—the corporations will not concede the point;—the people will not accept the boon.

But who will venture so to traduce the people of this country? If such a course was ready for adoption—if his Majesty's Government should be prepared to sanction it—if the king should graciously incline to promote it—and if such a measure could be effected in such a manner, by the consent of all, can it be possible that the people,—either the corporations, or the inhabitants—the governors or the governed—would withhold their part of the general assent?

The enemies of both—those who wish not peace but dissension—may make the uncharitable assertion; but it is impossible to be true.

The corporations, particularly their ruling members, are men of character, and high feeling. The late inquiries into their conduct have very generally redounded much to their credit. And there never was a period in which they might with honour so easily relinquish those usages which they have not themselves instituted, but received from their predecessors: nor could any occasion arise in which the people might, with more propriety, forgetting the past, cordially co-operate with their neighbours and present superiors in effecting this glorious work of harmony—reconciliation—and *loyalty*.

Nor is this mere hypothesis. There are corporations—and many—who are at this moment ready to make these

concessions, and some are even meditating them. Numbers of our fellow-subjects are ready to co-operate in this exemplary act of charity and peace. Nothing is required to carry it into effect but the sanction of a wise, firm, and liberal government, and the exertions of those who are sufficiently zealous and patriotic to undertake the task of bringing these good intentions and motives into full action.

The object of this work is to give a general view of this extensive subject. Whether that object has been obtained, the public are to judge;—whether the conclusions are just, they are to decide;—whether any new system shall be introduced, the legislature must determine. But the authors, with a reverence for the simple form of our ancient system of government, may perhaps be excused a fervent hope, that—till some certain better form of municipal government can clearly be pointed out, it may not have been useless to have traced the intricate mazes of abuse and usurpation, in order to restore, through the medium of *the law, as it now stands*, that general uniform system of municipal government—which, deeply founded in the early principles of our law—and connected with the maxims and analogies of our constitution—has at least the merit of consistency, and the practical benefit of simplicity.



HISTORY

OF

CORPORATIONS.

THE BRITISH PERIOD.

IN considering the important subject of the rise and progress of our Municipal Institutions, opposite errors have been committed by those who have entered upon the Inquiry. Some relying upon our earliest historians, and their extravagant assertions during periods in which perverted tradition was substituted for truth, and history was involved in impenetrable darkness,—have adopted conjectural conclusions, necessarily various and uncertain; whilst on the contrary, others, discouraged by these fruitless endeavours, have flown to the opposite extreme of founding their speculations upon the discordant and anomalous usages at present existing.

It is intended to steer, if practicable, an even course between these opposite errors, by resorting exclusively to early history, where reference can be made to original documents—deducing them, in chronological order, to modern times;—eliciting occasionally the inferences which arise from them,—or leaving the documents to explain each other as they succeed in order of dates—and with a view of lessening the field of doubt, to collect, in the progress, such facts as are clear and undisputed, with the hope that they may illustrate those which are less distinct. A sanguine expectation is entertained, that by these means considerable progress may be

effected towards removing the obscurity so long supposed to envelope this important subject.

After so many abortive attempts, this anticipation may be thought presumptuous; but when it is remembered how many writers on this subject, though conspicuous for their learning, talent, or industry, have been biassed in their speculations by a spirit of party or political controversy, it may not be impossible, by dismissing all preconceived prejudices, to glean from their stores those results which they heedlessly or wilfully overlooked. Lord Coke, it is well known, was much misled as to the prescriptive right of parliamentary election, by the supposed authority of the old MSS. of the "Modus tenendi parliamentum," to which he clung with pertinacious anxiety; whilst Mr. Prynne, from his controversy on that point, acquired a bias too strong for the process of dispassionate inquiry. Neither did the latter, although he collected all the parliamentary writs together with great labour, sufficiently compare them with other documents, records, and ancient legal authorities.

Having a practical object in view, it is not the province of this work to be engaged too long in these obscure portions of our history from which little can be ascertained with accuracy. It is justly observed by Hume, when speaking of the British period, "that although the curiosity entertained by all civilized nations of inquiring into the exploits and adventures of their ancestors, commonly excites a regret that the history of remote ages should be so much involved in obscurity;" yet he properly represses the unavailing ardour that would push these researches beyond the period in which literary monuments are framed or preserved.

Thus warned by the prudent advice of one so experienced in these investigations, it would be unpardonable to rush indiscreetly on these intricate and unfrequented paths which he was unwilling to tread.

We find no facts in this period of our history, or in that of our earlier ancestors the Celtæ, nor indeed in the contemporary annals of surrounding nations, which can afford us any distinct and clear guide to the peculiar form and

nature of the particular constitution of the early inhabitants of this island.

The well authenticated facts, that the Britons inhabited huts, which they occasionally moved from place to place, as necessity, convenience, or the feeding of their cattle required—that they were generally employed in hunting or warfare—are sufficient to convince us that we cannot with confidence expect any satisfactory information from those times to assist our present researches. The utmost that could be derived from the history of our first ancestors, is the indistinct origin of some of those institutions which continued into after ages, and which, though not the direct subject of our inquiry, might nevertheless tend, in some slight degree, to guide our judgments in the investigation of the real source of our institutions.

Disregarding, therefore, the ordinary references to those authors, who have been so frequently cited for the purpose of illustrating the state and condition of the Britons, but which afford no information applicable to our municipal institutions, we proceed to the Roman period of our history, in which we shall find some traces of Boroughs, though it may be much doubted whether they will afford us any material light as to the peculiar nature of the Burghs in England. One observation, however, may be made with respect to the general policy of the laws of the Britons as administered by the Druids,* by whom a species of outlawry and excommunication seemed to have been adopted as one of the methods by which those powerful magicians controlled the people, and which consisted in excluding the denounced party from the advantages of their usual regulations or laws, a provision which appears to have existed in the early history of most nations, and has been continued in many of them to more modern periods. In this country they were strenuously and severely enforced by our Saxon and Norman ancestors, as one of the effectual means of government; and the remains of that system continue to this day in our modern process of outlawry.

* Strabo, l. iv. p. 200.

Cæsar, speaking of the Druids, says :—*Siquis aut privatus aut publicus eorum decreto non steterit, sacrificiis interdicunt. Hæc pœna apud eos est, gravissima. Quibus ita est interdictum ii numero impiorum ac sceleratorum habentur: ab iis omnes decedunt aditum eorum sermonemque defugiunt ne quid ex contagione incommodi accipiant: neque iis petentibus jus redditur neque honos ullus communicatur.**

THE ROMAN PERIOD.

Ant.
Christ,
55.

WHATEVER the institutions of our British ancestors might have been, the probability is, that they were in a great degree changed, if not altogether obliterated, by their more civilized and powerful invaders the Romans, during the 400 years they maintained their authority in this island.

A. D. 43. Plautius the Roman general, Claudius the emperor, and Ostorius Scapula, gradually extended their arms over the south of England; and Seutonius Paulina, during the reign of Nero, carried them to the more remote parts of the country.

But Julius Agricola, in the reigns of Vespasian, Titus and Domitian, finally reduced that part of the island usually called England under the Roman dominion, and established their power throughout the land.

The consideration of the change which was effected in the institutions and habits of the people, by the introduction of the Roman language and manners, and their system of law and politics, is that which is most important to our present inquiry.

Hence it may be material cursorily to consider the leading features of their institutions, at least as far as they appear to have been in any degree adopted and continued in this country.

* Cæsar. lib. vi. c. 12. Tacitus, de Mor. Germ. c. 16. Vit. Agricolæ, c. 21. And see post. as to the term "Law-worthy," in the Saxon Charter granted to London by William the Conqueror.

It is not however necessary to discuss this matter at any length, as the subject has been already exhausted by Mr. Spence, in his learned and elaborate "Inquiry into the Origin of the Laws and Political Institutions of Modern Europe."

It has been asserted, that either the Romans were so much engaged in making and securing their conquests in Britain, as not to find leisure for regarding the municipal establishments; or, the relative situation in which they stood with the natives of the land, made civil regulations between them unnecessary. These, however, are but conjectures, which afford little satisfaction; and they are opposed by the contrary assertions, that the Roman institutions were introduced into this country, and the British youth eagerly engaged in the study of their laws. We may, however, turn from these surmises to the fact, that be the cause what it may—whether those suggested above,—or that the exterminating inroads of the Saxons obliterated all trace which the Romans had left,—or the introduction of the Ecclesiastical Laws at the same time with Christianity, established institutions which differed from the more ancient habits of the Roman nation—there were in the Saxon periods of our history, scarcely any indications to be found of the civil institutions or laws of the Romans, with the exception, perhaps, of a few which related to the descent and transmission of real property.

It may also be added, that in the list of the civil and military officers and magistrates appointed for the maintenance and administration of the Roman government in Britain, there is scarcely one which corresponds, in any degree, with the officers mentioned in our Saxon records.

Indeed it seems certain, that the Roman laws were unknown to our early ancestors, and were withheld from them; for about the year 169, Lucius, who is described as King of Britain, sent to Eleutherius, at Rome, a petition from himself and his nobles, that the Roman laws might be sent to them for their adoption in this kingdom. But Eleutherius in his answer says, that "he holds those laws in reprobation, and refers the king rather to the laws of God."

The religious complexion of this letter, and the superstition of those times, will account for the ready adoption of the advice of Eleutherius; and hence, from the most ancient records which we have of our early laws, a strong tincture of superstition and religious zeal, with frequent quotations from the Scriptures, form one of their striking characteristics.

/// Selden says, that the Civil Law was practised in England nearly 360 years, and that Papinian himself presided in Yorkshire.* But this seems highly improbable; and even were it so, it is clear from the facts before stated, and from the Saxon laws, that all traces of the civil law were at that time obliterated. The Folkmotes, and the mode of holding them, were clearly of northern origin, and either the remains of the British institutions, or of Saxon introduction.

It is said, that the Romans made both London and Verulamium Municipia,† or free cities, and all the inhabitants had the privileges of Roman citizens.

But if this were so, London was certainly afterwards put on a different footing, as may be inferred from the Charter granted to it by William the Conqueror, which we shall hereafter insert.

The inscription of a citizen on the rolls of a city,‡ is an act altogether distinct from our Saxon originals, and throws little light upon this subject. In a further stage of this work, a conjecture will be hazarded, that at some period after the knowledge of the civil law was revived in Europe,|| and that code became well known in this country, and studied by the ecclesiastics, the admission of

* Dissert. in Fletam, cap. 4, et not. in Fortis. p. 8—10.

† Municipis sunt cives Romani ex Municipiis, legibus suis et suo jure utentes.—Aul. Gell. xvi. 13.

‡ See Cic. Orat. pro Archæ Portâ, and Lex Papia de peregrinis urbe expellendis.

The decision of questions affecting the freedom of individuals rested with the pro-consul.

|| See Robertson's Hist. Charles V. vol. i. p. 39 & 65—316, &c.; and the Civil Law is said by Sir Wm. Blackstone (adopting the opinion of Spelman) to have been first imported into this country in the turbulent times of King Stephen, about 1151. The Pandects were discovered at Amalphi in 1137, 2d Stephen.—3 Black. Com. 66.

freemen into Corporations, and the claim to freedom by *primogeniture*, as well as many of the intricate distinctions now practised in Corporations, and the principles upon which the present system of Corporation Law has been founded, were borrowed from this source. The illustration of this view of the subject, and of the imperfect manner in which these principles amalgamate with the simplicity of our common law, will be attempted hereafter in the proper place.

At the present it suffices to say, that in this period of our inquiry also, for the reasons we have given, little satisfactory information is to be obtained explanatory of the *origin or nature of the English Boroughs and Burgesses*.

That it may not however appear to be altogether overlooked, it should be observed that the Romans undoubtedly had Boroughs,* and the name has been supposed to be derived from a Greek origin—*πυργος*,† a tower. But leaving this etymological surmise to defend itself, it seems probable that we may have received the term *through* the Romans.‡ And as the actual existence of Boroughs in this country from the time of Edward the Confessor will be hereafter established beyond all controversy, this conjecture must not be considered as altogether unfounded; particularly as the Boroughs existing in the time of King Edward are not spoken of as if then newly introduced, but as having been established so long that they had grown into a part of the political institutions of the country.

However it is clear, that, if we had the term from the Romans, they left us little but the name; for there appears no reason to suppose that the Boroughs in England, during the Saxon and Norman times, had any thing in common with the Boroughs of the Romans.

* Cod. Theod. vii. 13. Cod. Just. xi. 65—6. Cod. Theod. xii. 19.

† See Brady on Boroughs, p. 1.

‡ Thus there are places in England which probably were named Boroughs by the Romans,—as Borough Castle, near Great Yarmouth, in Norfolk; and there are also other places called Boroughs in very early times, which have not now, nor have had for many centuries, any trace of borough privileges, as Attleborough, Rickborough, Templeburgh, Overborough, Carrowburgh, Drumburgh, Woodenburgh, and Gainsborough.

They had also their free cities and towns,* as we afterwards had in England; but the link connecting the two is now lost, and how far they resembled each other it would be very difficult to trace.

As in most instances we lost the substance of the Roman institutions, so also in many did we lose even the name;—a strong proof that the subsequent inroads of the Saxons, the Danes, and the Normans effectually obliterated the remains of our more southern invaders.

They had in their provinces councils of Decurions; and such officers existed in England,† as a rescript respecting them is directed to the Governor of Britain; but no trace of such officers is afterwards to be found here.

There is however one circumstance which was much regarded by the Roman Law, and appears also to have been a subject of anxious consideration during all the early periods of our history—the unceasing effort to prevent vagrancy.‡ Thus, by the Roman law, no traveller was permitted to stray fifty paces out of the public road; and every person was located, either by *birth* or by some other decisive act under the law, and he was expected at all times to be domiciled in the place to which he was by birth or other circumstance united, and in which alone he was enabled to sue for any injuries done to him.

The freeman *born* in a place was expected, at the age of 21, to return to it; and the proper residence for every individual was defined by the law|| with the same exactness as in our ancient provisions against vagrancy, and the modern laws for the settlement of the poor; all of which, in fact, resolve themselves into the single question, whether an individual belongs, as a fixed inhabitant, to one place or another.

There were also under the Roman Government certain companies,§ probably in some degree analogous to the guilds

* “Civitas Libera et Fœderata.”—Plin. Epist. x. 93.

† Cod. Theod. xi. 7.

‡ Cod. Theod. vii. 5.

|| Cod. Theod. xiv. 9. Cod. Just. x. 42.

§ Cod. Theod. xiii. 4 & 5. Cod. Theod. xiv. 4. 7. 8. Plin. Epist. x. 42, 43.

which at an early period existed in this country. These companies also, like our guilds, became so powerful as to be dangerous to the state,* and Cæsar dissolved all that had not existed from old times, in the same manner as the English kings in subsequent periods proceeded against the adulterine guilds; it being a principle of the Roman law that no company could be formed but under the sanction of the emperor. A similar doctrine, probably derived from this source, though also intimately connected with other principles of our law, was subsequently adopted by us, in the maxim, *that no corporations could be made except by the king*. It should however be observed, with respect to these companies, that it was an express law that all the members of them should remain in their proper cities,† or if they left them, should in due time return.

Another provision of the Roman law should also be referred to, as in some degree analogous to clauses which frequently occur in the earlier English charters. By the Theodosian code the owners of houses in the several cities were compellable to provide residence and provision for the emperor and the military attending him, when they came to the city.‡ And in the same manner constant reference will hereafter be seen in our most ancient documents,|| and in the early English charters, to the duty of providing lodging and provision for the king, when he visited the different parts of his kingdom, and passed through the several cities and boroughs. Immunities from this obligation, or at least protection from the abuses of it, were also the frequent subjects of the grants of the sovereign.

Many other instances will occur in the course of our investigation of striking similarities in some of our laws and institutions to those of the Romans; but the detail of them is postponed to those periods of our history in which they

* Sueton. J. Cæsar, c. 42.

† *Judices dabunt operam ut ad proprias civitates qui longius abierunt retrahi jubeant cum omnibus quæ eorum erunt.* Cod. Theod. xiv. 7.

‡ Cod. Theod. viii. 8. Cod. Just. xii. 41. Digest. i. 16. Dion. Cass. lvi. p. 583. Liv. xiii. c. 1. Cic. ad Attic. v. 21.

|| Domesday—London Charter.

will occur in their chronological order, and we now proceed to the next obvious division of our subject, "The Saxon Period."

THE SAXON PERIOD.

In entering upon the Saxon period of our history, as contradistinguished from the Roman, we should advert, in the first instance, to that acknowledged spirit of liberty which has been allowed, by all historians, to have pervaded the institutions of our German ancestors, and to the more popular character of their government; the people, in a greater or less degree, interfering in almost all the weightier matters of the state, the making of war or peace, the administration of justice, the regulation of police, and the contribution to the public exigencies.

The devastation effected by the Saxons, so forcibly described by the venerable Bede,* in a great degree obliterated the traces of the Roman institutions, which those civilized people would, no doubt, have otherwise left behind them. We must therefore, principally, look to the Saxon laws and manners, in order to ascertain the state of the people at this time; for if the historians who assert that the language, customs, and political institutions of the country were totally changed, are not to the letter strictly correct, yet there is every reason to believe that they, in substance, nearly approached the truth. However, the first Saxon invaders were, probably, like the Romans, so much engaged in the turmoils of war and securing their acquisitions, that their institutions, for some considerable period after their first landing in this country, were rather military than civil, and we have now few traces left of their earliest political government.

The struggles between the several leaders who, at different periods, came over to this country, also retarded the formation of regular laws and institutions; and before the Heptarchy,

* Lib. i. c. 15.

very little was effected in this respect, of which any traces have been received by posterity.

The earliest records we now possess, upon which reliance can be placed, are found in this æra of our history; and though these are but few in number, still they undoubtedly afford a distinct view of the different classes of society, their relative importance, and sufficient indications of their rights and privileges to illustrate the present subject of inquiry.

It must always be remembered, that *nothing has occurred down to the present time, to alter the class or description of persons who, at the close of the Saxon dynasty, were called "Burgesses;"* and that it is in these times we are to direct our researches for the class, description, duties, and privileges of the body of men who, from the commencement of the Saxon Government, (if not before,) were called "*Freemen.*"

The documents, upon which we can rely with the most confidence, as both authentic and important, are the *Saxon Laws*.

The first are those of Ethelbert, who was king of Kent for 51 years, from 564 to 616. Bede states that some laws of Ethelbert were in existence in his time in the English language.* The extracts here inserted, as well as those of Hlotharius, Eadric, Wihtræd, Ina, and the other Saxon Kings, are taken from Wilkins's *Leges Anglo-Saxonicæ*.

In these laws the *people* are described by the general term *leod*;—husbandmen as *Leopler*;—*freemen*, by the Saxon word *Fyrman*, *Fyman* or *Fneoman*;—and servants, as a distinct class.

Sir Francis Palgrave states the *Freemen* to be slaves; but the Dictionaries and Glossaries all interpret the word as *freemen*:—and the context, where the word is used, seems to require that sense.†

The *King's town* (*Cynngjer tune*) is spoken of, as well as the *Earl's*.

Hallam, in his *History of the Middle Ages*, seems to be of opinion, that the town in which a criminal resided, or his family, was not originally responsible for his crime, but only, as it were, perpetual bail for him:—but by the 23rd Sec. 23.

* See *Ecc. Hist. lib. ii. c. 5.*

† *Rise and Progress of the English Commonwealth, p. 196.*

Ethelred. section of these laws it appears, that the relations of a homicide were to pay half the ordinary forfeiture for his offence.

The fine payable on the imprisonment of a *freeman* is 20s.; and the mulcts of freemen for different offences are specified, as well as those for servants.

It may be observed, that the term good men (*ȝob man*) properly rendered in Latin by *probi homines*, the expression so constantly occurring in our ancient laws and charters, is to be met with in a document of this reign. The award of a suit between Wynfleda and Leofwini, concerning lands at Haucburne and Braderfield, which is still preserved in the Cottonian library, concludes with a statement of the witnesses to the transaction, who are the King's reeve (*cynnyȝer ȝerefa*), two others by name, and many a good man in addition, *ȝ menȝ ȝob man, eacan him*.*

Lothaire
& Edric.
675.

After the reigns of Eadbald, Ercombert, and Egbert, Lothaire, brother of the last king, took possession of the kingdom against the right of Edric, the son of Egbert. Lothaire reigned 10 years, from 675 to 685. The body of laws under his name and that of Eadric, as kings of Kent, called also judgments, consist of 16 sections; and the title describes Lothaire and Eadric as kings of the *inhabitants* of Kent, *Lantpapa*.† The first section speaks of noblemen (*eoplcundne mannan*), from which it would appear that the earls were not merely officers, but members of a noble rank, or class in society. *Freemen* are also spoken of in these laws, under the same name as in the former; and *servants*, for whom their lords or thanes were responsible, are described as *manner ȝerne*.

Sec. 1.

Sec. 6.

Sec. 5.

Sec. 16.

The period of guardianship is spoken of as limited to the time when the ward has seen 10 winters.

The compurgation, by four compurgators, of a freeman who has committed any theft, is mentioned; and one of the compurgators is to come *from the town to which he belongs*. A striking instance, even in these early times, of the manner in which the law treated the *inhabitants* of the country, as at

* Ayloff's Introduction to the Calendar of the Ancient Charters.

† *Papa*, says Somner, "in compositione *habitatores* vel *incolæ* significat;" and cites this passage and the charter of London: which see post.

tached to the places in which they were born, or in which they had their domicile.

Lothaire
& Edric,
675.

And with reference to the frequent mention, in early charters, particularly those of London, of *Scot* or *Scotale*, or common contribution for liquor, it may here be observed, in order to prove the attention which our ancient laws paid to the security of the people at these convivial meetings, and to the protection of every man's house, it is expressly provided, "that if any man shall trip up another where men drink, he shall pay a fine, as well to the person injured, *as to the owner of the house*, and to the king."

The earliest trace also of that law (which in a subsequent period we meet with again in Bracton*) by which the host was made liable for his guest, occurs here: and we find that he who receives a stranger into his own house for three nights, (that is a merchant or other foreigner,) and whilst he supports him with his own food, if the stranger does injury to any one, the host shall do the other justice, or lose his right; or, in other words, be out of the protection of the law:—an expression which will tend to explain the term "law-worthy," occurring hereafter in the Charter of William the Conqueror to the city of London.

The people of Kent are called "*Cantwara*," as the people of London, in the Charter of William the first,† above alluded to, are called the "*Burghwara*," or the people of the Borough of London, though London itself is in these Laws spoken of merely as a *vic*, or town, from which the common adjunctive appellation of *wick* is borrowed:—and it is a striking fact, that although the Burgesses of London are mentioned in Domesday, London itself is not entered as a separate Borough, like many other places.

It is provided, that if any Man of Kent buys any thing in London, he shall have two or three ceorls to witness, or the "King's reeve"‡ of the *wic*:—and if the thing is afterwards taken with him in Kent, then he shall produce at the King's Court in the City, the person who sold it to him, &c.

* Lib. iii. fol. 124. 6.

† See post.

‡ "Reeve" is by no means a term confined to this country, but seems to have existed in Germany; where, with relation to the district over which his office extends, he is called "Burgreve," "Margreve," and "Landsgreve."

Lothaire
& Edric,
675.

And the same King's Court is mentioned in a preceding part of these Laws; and the forfeit to the King is called "Geld;"—a term, the meaning and application of which will be investigated hereafter.

Witred,
691.

The next Saxon Code is that of Witred, another King of the inhabitants of Kent, who succeeding Lothaire and Edric his brother, reigned from 691 to 725. These Laws, made at Berkhamstead, at an assembly of the great men, called the Gemote, and at which were present the Archbishop and Bishop of Rochester, appear to have been made with the assent of all the people.

It is first provided (as in Magna Charta, and other charters of later periods), that the church should enjoy its rights.

Foreigners are spoken of—the ceorls and the priests. Vagrancy (which it was ever the policy of our laws to prevent*) is prohibited; and hospitality is to be denied to a vagrant who has not a license.

There is also a provision in those laws which relates directly to the object of our present research:—It is provided, "that if any one should make his man *free* at the altar, he shall be *free* amongst the people."

And if a *servant* did any servile work on a Sunday contrary to the order of his lord, he is to pay a fine to his lord, or suffer in his body.

The mode of compurgation for a "*quest*" is specified, as well as for ceorls.

The cognizance of accusations against the servants of the bishop or the king is given to the church; an early instance of the division of the secular and ecclesiastical jurisdiction. The authority of the *reeve* is also recognised.

The servants of the "folkmen" are mentioned, as well as *freemen*:—and the power of the king to send offenders beyond the sea,—the origin probably of our transportation.

If a *stranger* (who is called a "*foreign coming man*") is found wandering about, not proclaiming his ware by acclamation, or by the blowing of a horn,† (the usual method in

* See post. Stat. Rich. II.

† Public meetings in many places in Kent and Sussex, and other parts of the country, are called "Hornblowings." See Customals of the Cinque Ports, post.

those times of giving public notice,) he is to be taken for a thief, and slain or redeemed.

Witred,
691.

Another strong instance of the severe penalties which the laws, as a matter of police, annexed to secret vagancy; the suspicion they entertained of strangers, and the importance they attributed, as will be further seen hereafter, to local residence and responsibility. In this law, which is repeated by Ina, is probably to be traced the principle upon which notice was required to be given before any person could become a settled inhabitant of a place.

At the close of these laws fines are imposed, varying in their amounts, for the entire or partial breach of the peace;—the former apparently for injuries to life or dignity; the latter for injuries to goods and the like.

Another body of laws is ascribed to Ina, King of the West Saxons, who began to reign in the commencement of the eighth, or as some more accurately state, at the end of the seventh century. He considerably extended his dominions by conquest, and was justly celebrated for the moderation with which he used his victories, and his clemency to the vanquished. He also remodelled the laws, making in them such alterations and additions as might adapt them to his own immediate subjects and the conquered Britons.

Ina,
688 to
726.

This code is stated in the introduction, to be made by the advice of the bishops and alderman in the great Assembly, or “Witan,” of the people, and refers, in the commencement, to the “Rights of the People.”

The third section, concerning work on Sundays,* directs, that if a bondman works on a Sunday by order of his master he shall be *free*; and if a freeman works on that day without the order of his superior, he shall lose his liberty, or 60*s*.

From which it appears, first, that the strong tendency of these laws was to increase the number of freemen;—next, their freedom could be obtained by other means than merely by *tenure*, as some have erroneously supposed;—thirdly, although a species of freedom had been obtained by such acts, it could be forfeited by subsequent legal disability;—and, lastly, that some persons, though of free condition, were still, to a certain

* See also, Ll. Canute, sec. 42.

- Ina. degree, under the control of their lords, to whom, by forfeiting their freedom, they might again become subservient.
- Sec. 6. The sixth section of the laws of Ina imposes a mulct on any person fighting in the king's house, or in the church;* and adds a penalty for any person doing the same in the house of an alderman, or other *geriscund* man, from which it appears that the alderman was ranked with the wise men of the witan; and that the qualification for his office was, like theirs, the personal recommendation of wisdom, or some other attribute.
- Sec. 8. The eighth speaks of the denial of justice by the shire man;—from which it is obvious that at that time some person presided in the shires, and had the jurisdiction of a judge; probably the alderman, and to that officer may be ascribed the origin of the present sheriffs.
- Sec. 12. The cautious alarm which our ancestors had at all offences committed by numbers is apparent in this law, which, after providing that a thief taken shall be punished with death, or be ransomed, directs, "that when seven act together they shall be considered as thieves;" from seven to twenty-five, a "troop;" and beyond that number, a "band."
- Sec. 14. And the 14th section provides, that if any person is accused of having been in a troop (that is, for the purpose of committing any theft), the crime may be remitted to him for 120 hides:—showing how heinous such an offence was esteemed.
- Sec. 15. He who joins a band of thieves shall redeem this with the price of his head.
- Sec. 20. The law of Witred, against those wandering in woods, is repeated.
- Sec. 22. Pledges are mentioned under the appellation of "Burgs" or "Borgs;" and the "Borbreach," or breach of the pledge.†
- Sec. 25. Merchants are to sell before witnesses:—A provision which will be found hereafter, to explain the reason why goods were required to be sold within boroughs, and why the reeve, or king's bailiff, was required to witness the sale.
- Sec. 30. If any one received a fugitive villain in his house, and supported him, he was to be fined.

* See also sec. 11.

† See also sec. 41 & 74.

The "Were Gild," or ransom for a man, is mentioned— Ina.
 and this chapter provides—that if an "Alderman" should Sec. 36.
 allow a thief to escape, who has been taken, he shall lose
 his "Shire"—establishing that it was the *Alderman* who at
 that time presided over the shire.

Also—if any one departed from his lord without leave, or Sec. 39.
 fled into another "Shire," he is directed to return to the
 place where he first was, and pay to his lord 60s.

In this law we see the origin of those rights of the lord
 which in after times were put in force by the Writ "de
 nativo replegiando," for reclaiming native villains, but to
 which the lord was entitled only in case he pursued and
 reclaimed his villain promptly; for the law requiring (as we
 shall see hereafter), that every man living in a place for a
 year and a day should do his "Suit" at the Court Leet, (but
 to which villains were not bound,) it became necessary, and
 was obviously reasonable, that the lord neglecting his claim
 for so long a period should lose his right, and the law not be
 altered in its course, but the villain be treated as "Free,"
 and do his "Suit" accordingly:—the recognised rule laid
 down by Glanville in the reign of Henry II.* The remark
 should not be omitted, that the local divisions of the county
 are here expressed by the word "Shire."†

Shire

This chapter relates to the breach of the peace of the Sec. 45.
 Borough—"Burhbreache," for which 120s. were to be paid.
 If it were the place at which the King, the Bishop, or
 "Alderman lived," 80s.; if a Minister of the King, 60s.; and
 if a person of equal condition, 35s.

The "Alderman" and the "King's Alderman" frequently
 occur in these laws.

The 48th section relates to those who had been guilty of Sec. 48.
 crimes, and had lost their liberties; and it appears that loss
 of liberty was at that time one mode of punishment.

The pitiable and destitute state of slaves under the Saxons Sec. 54.
 may be collected from this:—that, although all other per-
 sons were to be punished by pecuniary mulcts, the slaves
 who had no property, had not these means of remuneration

* Vid. Glan. post.

† Ll. Æthelst. sec. 8.

Ina. or ransom, and they were therefore punished by stripes. The incapacity of slaves to possess property will be important to be preserved in remembrance, because we shall hereafter see, that an incapacity to trade was one of the disadvantages of their station; and that, on the contrary, actual trading, was one of the proofs of a person being of "free condition."

Alderman. The term "*Alderman*" is so familiar to our ears, and has been so long connected with the modern notion of corporations, that it is now difficult to entertain the idea of its being applicable in any other manner. It is, however, most indisputable, that this word originally had *not a corporate signification*: and it will not be foreign from the subject of our present inquiry to investigate its primitive use; and by distinctly establishing its connection with our early common law, to shew that its subsequent application to officers in corporations was only in respect of their representing common law officers in their jurisdiction and municipal powers; their corporate character being merely a superinduced—accidental—and collateral circumstance, not connected with their legal functions.

This name appears to have been used from the earliest period of our history as a term then well understood; and there can be no doubt but that ealþopmen existed, and probably for some considerable time, before the making of these laws. Lambard translates this word "*senator*;" but it is unnecessary to comment at length on this translation, as it can only have been adopted for the purpose of giving it a classical paraphrase. There does not appear to be any thing in the use of the name, either in these or any subsequent laws, which affords even a remote analogy to the dignity of a senator amongst the Romans; and for the reason given before, all their laws, customs and ranks seem to have been either altogether obliterated by the Saxons when they invaded this country, or so altered, that the terms used by the Romans appear entirely inapplicable to the officers in this country. There seems therefore no necessity for insisting further that the Roman term "*senator*" is

inapplicable to the Saxon rank of "ealþoþman;" nor indeed does Lambard himself appear to have thought this the appropriate translation, as he afterwards, in the eighth section, applies the same term, senator, to other officers.

Junius, in the Grammar of the Anglo-Saxon language which is prefixed to his Etymologicum Anglicanum, translates "ealþoþman"—"princeps"—which, in its ordinary signification, is probably as far removed as senator from the accurate meaning of the term in the Saxon laws.

The "Alderman" was in fact the officer of the king, who had a control over him, and the power of continuing him in his office after it had become forfeited:—from whence it would seem no strained inference to conclude that, the power of appointment was also in the crown, as is stated in the Saxon Annals, p. 49, and in the 51st section of these laws he is called the "king's alderman"—cýnungeŕ ealþoþmannum.

In the 46th section, which relates to the breach of the peace, allusion is made to the "Borough" or town of the "Ealþoþman."

Borough

In the laws of the other Saxon kings, the "Aldermen" are also repeatedly mentioned.

Thus, in the 3d section of Alfred's laws, which relates to the breach of pledge, after a penalty is fixed upon breach of pledge to the king, the archbishop and the bishop, a penalty is fixed for the same offence against the "Ealþoþman."

So, section 15, fighting in the presence of the "Ealþoþman" is punished.

And in the 33d section of the same laws, a man leaving his residence, is required to make the "Alderman" acquainted with it;—or, as it is in the original, to make the "Alderman" a witness of it. From this law it appears also, that the districts to which this change of residence referred were the "Alderman's Shire," as it afterwards speaks of the removal from one shire to another: and this appears to be general, and to apply as well to borough towns, as to the shire.

In the 34th section of the laws of Alfred there is a difference in the title of the alderman; he is there spoken of

Ina. as presiding over the "Gemote," and is called the *cýnnyger*—or
Alderman. "King's Alderman." Whether there was any real distinction between the alderman, and the king's alderman; and whether there were two distinct officers of that name; or whether the additional appellation was only given when the alderman was performing this part of his function of presiding over the Gemote, (a service more particularly connected with his duty to the king,) does not distinctly appear: but the latter was probably the case; particularly, as speaking afterwards of the ecclesiastical officer who also attended at the Gemote, he is called the *cýnnyger ppreort*,—or king's priest; and there is no reason for thinking that there were two orders, the king priests, and any other class.

In the 3d chapter of the Laws of Æthelstane, in the list of the *were-gylds*, or the sums to be paid for the life of a person killed, the "*ealþoþman*" is ranked after the king—the archbishop—the earl—or *atheling*,* (that is, the prince of the blood,) and the bishop.

One of the duties of the alderman is mentioned in the 5th section of the Laws of King Edgar, which speaks of the hundred, the borough, and the shire Gemote, and directs how they are each to be held:—expressly providing that at the shire gemote, the bishop and "alderman" shall be present:—the former to teach God's law, and the latter the people's.

In the 1st section of the 2d chapter of Æthelred's Laws, two "*ealþoþmen*," Æthelward and Ælfric, are mentioned as having, with the archbishop, made a treaty, which was adopted by the king and the army. The latter was Duke of Mercia,† and is celebrated in the annals of those times for his treachery and repeated perfidies; and the treaty alluded to is probably that which was entered into with the Danes when they landed in Essex in 991, and received from the English a considerable sum of money to leave the country.

In other parts of the Saxon laws the term alderman ap-

* *Atheling* or prince of the blood. See Hume's Hist. of Eng. note G; Selden's Tit. of Honour, chap. 5. p. 603, 604; et L. L. Cnuti, sec. 55.

† See Hume.

pears clearly to denote seigniority in age, or "Ealdor-man," ^{Ina.} which probably gave them their station, as indicative of Alderman experience and wisdom, as Sallust describes the Roman senators: "Delecti, quibus corpus annis infirmum, ingenium sapientiâ validum erat, reipublicæ consultabant. Hi vel ætate vel curæ similitudine *patres* appellabantur."* But in no instance was the term, either in the Saxon law, or in any document for many subsequent centuries, used as descriptive of a corporate officer.

N. Bacon correctly states, † that "our Saxon ancestors had a magistracy peculiar to each place or township, under one magistrate or head, whom they called Alderman; who held a court twice a year, which was in the nature of a Leet, with a view of frank-pledge, as may appear in the cases of Dorchester, Cirester and Doncaster, in Alfred's time.

Again, Squire says, ‡ every person to whose hand the scale of justice was intrusted, was looked upon by them and esteemed as one of the magnates regni; and agreeably to this notion, the decemvir or head of his tithing had the same distinguishing and honourable appellation of *alderman* bestowed upon him, as the governor of the county; nor was there any other difference between them, than merely in the extent, and perhaps duration, of their jurisdiction.

THE LAWS OF ALFRED.

It was at this period of our history that the Danes made 787 to 901. their first inroad into this country, continuing for some time afterwards to molest the inhabitants by rapine, cruelty, and bloodshed, and to extend their colonies over the island. But, at this momentous æra, the powerful genius of Alfred (fortunately for England) shone forth to support its falling fortunes, and laid the solid foundation of its future glory.

His code of laws commences with the Decalogue: after Sec. 11.

* Bell. Cat.

† Disc. of the Laws, p. 50. Ll. Cnuti, c. 44. Mirr. c. 5. sec. 1.

‡ Squire, 257.

Alfred. which the 11th section provides, that if any person should buy a bondman, he shall serve for six years, and the seventh he shall be "free" gratis; and enacts with particularity the terms upon which he shall depart from or continue with his lord; and the mark which is to be placed upon him to designate him as a bondman.

It is a singular coincidence that, at this early period, it was a provision that a person should become "free" *after seven years' service*; considering that this appears to have been the practice in London in early times—to have since been diffused and adopted throughout the country—and to have continued in operation to this day. Another coincidence is still more remarkable. It appears in the "Leges Burgorum," that, by the law of Scotland, though a person became "free" (as in England) by residing away from his lord for a year and a day; yet he was not thereby absolutely free, but was reclaimable by his lord, at any time within seven years; after which he was absolutely and irreclaimably free.

It must not, however, be forgotten, that all these provisions are connected with the common law, and with the mode of ascertaining whether persons belonged to that class of society called "free;" or, whether they were bondmen: but, it had no reference whatever to "Corporations," "trade," or any object of that description.

It must also be observed from this clause (as well as many others), that the right of lords to sell their native bondmen is fully acknowledged, and many methods of acquiring freedom were recognised:—Thus, if the son of a lord deflowered a bondwoman, and he refused to clothe and endow her, she was to be free.

Sec. 20. So, also, if any one should inflict a severe bodily wound upon his servant, he was thereby manumitted.

Alfred concludes this introductory chapter of his laws, with the declaration that "he had collected together, and committed to writing, many of those things which his ancestors had observed, and which he approved, and with the advice of his Witan had neglected many of them which he did not approve." And he adds that "*he had not dared*

“to attempt to commit to writing any of his own, for it was Alfred.
 “unknown to him what might be satisfactory to them who
 “succeeded him; but whatsoever he could find either in the
 “days of Ina, Offa, or Ethelbert which appeared to him just,
 “he had adopted, and the rest had neglected.” Principles of
 legislation, founded upon the experience of the past, and
 cautious as to speculations for the future, not unworthy of
 imitation, even in these enlightened times.

The 1st section of the 1st chapter provides, as a matter of the greatest importance, for the mutual gage and pledge to be given by all people. And if any one shall refuse to perform that which he is pledged to do, his weapon and his goods are to be taken in trust by his friends, and he is to be committed in custody, for *forty days* in the king's town, and in default of being fed there by his friends, the *King's reeve* is to support him; and if such a person should die, it is declared that he should be unavenged; if he flies, he is to be an exile and excommunicated.

It is impossible not to remark the severity of punishment inflicted by our ancestors for not performing the pledge which had been given, as a breach of that confidence between man and man, by which the surest bonds of society, are firmly maintained.

The duration of the imprisonment for *forty days*, should also be noted as a period of time so frequently adopted by our laws, in the different æras of our history.

The king's town, *peopme*,* is also mentioned, and the king's reeve; and banishment and excommunication—punishments familiar to the Druids, (as we have before observed,) are also denounced upon the criminal.

The second clause provides for sanctuary, and speaks again of the king's town or farm, and of the “were,” or ransom of a man.†

The third relates to “*Borh Breach*,” and provides, that if any shall break the pledge which he has given to the king,

* Ll. Æthelst. s. 1.

† Ll. Æthelst. Introd. p. 56, and in the Constitutions of Æthelred, the “King's borough.”

Alfred. he shall make amends as it seems right to the king; and penalties are also given for the breach of pledge to the archbishop, bishop, or "alderman."

It should here be observed, that the pledge to the king which is spoken of, seems to be the origin of "Suit Royal" at the Court Leet, by which a party was bound to provide pledges to the king, as sureties to the law, for his good behaviour, and that he should be forthcoming to answer the law if any thing should be imputed to him.

Sec. 4. In the 4th section, provision is made for the punishment of treason against the king, earls, and lords.

Sec. 5. Further provision for sanctuary is made in the 5th section.

Sec. 18. In this clause we have a "twelve hynde man" (that is, a twelve hundred man) mentioned, as well as the "six hundred man," which occurs frequently.

Sec. 22. In this section the "Folc-mote" and the "King's Reeve" are spoken of.

Sec. 27. The 27th section provides, that if a person has no relations, he shall pay his ransom by those who are in "Gyld" with him.*

Sec. 30. The 30th clause declares, that "merchants" ought to take care that the men whom they bring with them, shall come into the "Folc-mote," before the king's reeve; and should say how many they are; and they shall take those whom they can produce afterwards in the "Folc-mote," to do right. And whenever they have occasion to take more persons with them, they shall give notice of it in the "Folc-mote" to the "king's reeve."

The same caution for the execution of justice to all, and establishing mutual responsibility to the law, (which we shall have occasion to remark throughout the whole of the Saxon laws,) is observable in this section: where the merchants are compelled to give notice of whom they have with them, and security for their forthcoming; all of which is to be done before the "King's Reeve." From which it appears, that the "Reeve," "Sheriff," or "Præpositus," was the officer of the crown for preserving the public peace;† of which the law was

* Ll. Æthelst. s. 2. † See his duty and punishment, Ll. Æthelst. cap. ii. sec. 1.

Alfred.

so jealously careful, that even foreigners resorting here for the purpose of trade and merchandise, were not allowed to come into the country without some person being responsible for their appearance when called upon, and for their obedience to the law. It is not therefore a subject of surprise, that we soon after this period, find traces of that general system of mutual responsibility by which the police of this country was in these early times protected, and to which all the subjects of the realm were required to conform, in the same manner as the merchants are compelled by this law. And as the inhabitants generally were, for this purpose, submitted to the jurisdiction of the sheriff, so by this law are the merchants obliged to go before him, for the purpose of enrolling themselves and their attendants.

The thirty-third section provides, that if any one wishes to go from one domicile into another lordship, he shall do this with the testimony of the "alderman" of his "shire." If he shall do this without his knowledge, he shall pay 120*s.*, half to the king in the "Shire," in which he before was, and half in that to which he shall have come. And if he shall have done any thing wrong where he first was, he who then has him in his service, shall compensate for this, and pay to the king 120*s.* for a fine. Sec. 33.

This section is again directed against *vagrancy*, ensures *responsibility* to the law, and recognises the liability of the lord for his bondman. And from it may be seen the importance which our early legislators attached to a *fixed residence*, and the scrupulous jealousy with which they guarded against capricious *vagrancy*.* The removing from one place to another, is here restrained, by the necessity of previous notice to the alderman, and is punished by a fine, particularly where it is accompanied with any misconduct.

Probably this law will account for the description of some of the tenants mentioned in Domesday, which occurs so frequently, viz., "he may go where he will;"—which seems by the law not to have been the case with servants.

A severe penalty is inflicted upon any one who shall fight Sec. 34.

* Vide post. Ll. Æthelst. sec. 8.

Alfred. in the "Folc-mote," in the presence of the "King's Alderman,"* and also upon any one who shall have disturbed the "Folc-mote" with arms.

Sec. 36. The breach of the peace of the king's borough, is severely punished; as well as that of the archbishops, bishops, and aldermen.

The preservation of the peace in the boroughs, appears to have been one of the great objects of these laws, and the breach of it is punished with the greatest severity.

Bocland is spoken of in the 37th section, as descending from ancestors, prohibiting the sale of it away from the heirs.†

Sec. 39, relating to feasts, provides, that they shall be holy-days to all *Freemen*, except servants and workmen.‡

Before we leave the reign of Alfred, we should take some notice of the book which was ordinarily called his "Dom Boc:"—we find the following allusion to it by Ayloff. "Alfred, as soon as he found himself freed from the enemies, which in the beginning of his reign had disturbed the public tranquillity, in order to put a stop to the disorders and licentiousness which the wars had caused, ordered a *survey* of the whole kingdom to be made, dividing it into certain *counties, hundreds, and tithings*; and having framed certain laws relating thereto, caused a transcript of them and the survey to be made, and deposited for public use in his then new-built abbey of Winchester, where that transcript acquired the appellation of 'Dom Boc,' or 'The Judges' Directory,' and was afterwards called 'Rotulus Wintoniæ.' However, whether such a transcript was written on a roll, or entered in a book, cannot now be ascertained, as it hath, in all probability, long since been entirely lost. Mr. Selden inquired after it in vain, not having been able, as he assures us, upon the most diligent search, to meet with the smallest fragment or trace of it."§

"Ingulphus, speaking of "Doomsday Book," adds, "talem

* "King's Alderman," see also Introduction to Ll. Athelst.

† 2d Sect. Ll. Ed. Eld.

‡ Spel. Con. lib. i. p. 371.

§ Aylf. Introduct. Cat. Car. An. xvii.

“rotulum et multum similem, ediderat quondam Rex Al-
 fredus, qui quidam Rotulus Wintoniæ vocatus est, quia
 disponebatur apud Wintoniam conservandus;” and in Finch
 we find the following definition of towns: * “A town is a
 precinct anciently containing ten families, whereupon, in
 some countries they are called ‘tythings,’ within *one of*
 which *tythings every man must be dwelling*, and find sureties
 for his good behaviour, else he that taketh him into his
 house is to be accused in the Leet.” †

This “Dom Boc” is said to have contained, amongst other things, a return of the *inhabitants* of every district: and Henry, in his History of England, ‡ gives the following description of Alfred’s division of the country: — “From this book, which contained a description of the rivers, mountains, woods, cities, towns and villages, with an account of the number of plough lands and *inhabitants* in each district, he divided the whole into a certain number of *shires*, nearly, though not exactly the same with our present counties. Each *shire* was again divided into *tithings* or *leths*, of which division there are still some vestiges in the ridings of Yorkshire, the leths of Kent, and the rapes of Sussex. § Every *tithing* was divided into so many centuries or *hundreds*, and each hundred into ten *decennaries*, or districts, containing ten families, or near that number, for in such distribution it was impossible to be quite precise and accurate. All the members of each decennary were *mutual pledges* for each other’s obedience to the laws, and answerable, with some equitable restrictions, for their disobedience. || Whoever was not a member of some decennary was considered as a vagabond, who could claim no protection or benefit from the laws of his country. In each of these divisions of *shires*, *tithings*, *hundreds*, and *decennaries*, that wise king appointed certain magistrates and courts.” It is impossible to conceive any distribution more admirably contrived than this for preserving peace and good

* Finch, p. 80. † 18 Hen. VI. sec. 13, et vid. post. Yarmouth Rolls.

‡ Hen. Hist. iii. 316. § Spelman, Vita Ælfridi, p. 74.

|| Wilkins, Leges Saxonice, p. 20–204.

Alfred. order, and bringing all the members of society under the immediate eye of the law, *as every member of it had nine persons besides himself who were answerable for his good behaviour.*

During this reign a colony of Danes were allowed to settle in the five towns of Derby, Nottingham, Leicester, Lincoln, and Stamford, who were called the five burghers, and continued there under that name, at the reign of Edward, the brother of Æthelstan; who, in 942, removed them from those towns, and settled them in other places.* And we find, in Æthelstan's reign the great battle between him and the confederated princes of the North, Constantine, Anlaff, and Ewen, in 938, was fought at a place called "Brunanburgh."†

GUTHRUN.

Guthrun, who received from Alfred East Anglia, entered with him into a league, which in its title purports to be made by all the English Witan. Like the other laws, it specifies the ransom to be paid for several offences, and in it (the only point material to our present inquiry) "Free men" are expressly mentioned.

Edward and Guthrun. The league also between Edward and Guthrun, declares in the title, that they are the rights which the Kings, Alfred and Guthrun, ratified;‡ and that it is the law which Alfred and Guthrun, and afterwards Edward and Guthrun, made.

Sec. 7. The seventh section provides, as in the laws of Ina, that "a free man," working upon a Sunday was to lose his liberty; and the lord compelling his bondman to work upon that day was to pay an amercement.§

* Hen. Hist. iii. 99. Sax. Chron. 114. Hen. Hunt. lib. 5.

† See also the second book of the Constitutions of Æthelred.

‡ Hen. Hist. iii. 96. Sax. Chron. 112.

§ Wilkins, 51.

|| A somewhat similar rule existed under the Roman law; thus, by the twelve Tables it was provided, "Patronus si clienti fraudem faxit, sacer esto." Tab. vii. Aul. Gell. xx. 1.

THE LAWS OF EDWARD THE ELDER.

The laws of Edward are addressed to all the "Reeves," 901 to 924. and refer to the "Dom Bec."

The first section provides, that no man shall buy *without the town*, and he shall have the "Port Reeve*" (the Reeve of the town)," as his witness; and enacts, in certain cases, that six men shall be named from the "Burh Shire," where the party had his home, to decide between the disputants. Sec. 1.

This section relates to some points which will be material to our present investigation.

First, no one is to buy *without the town*; this is the origin of the connection between the municipal rights, and government of towns, with trade; in order to prevent the facilities which would have been afforded to thieves to dispose of the property they had stolen. Promiscuous sales in privacy were forbidden:—and therefore every thing was to be brought into the town to be publicly disposed of; which afforded a remedy against the sale of stolen property, at the same time that it effectually prevented forestalling, which the law at all times endeavoured to restrain. Next, the sale was to be in the presence of the "Reeve," the king's officer:—and this is the origin of the interference of the "Port Reeve," "Bailiff," "Provost," or "Mayor," in the sale of articles within boroughs, as well for entering it, weighing, or measuring,—taking a toll for each of these acts.

This was the real foundation upon which the presiding officer in a borough gave to any person, if he came to live within it for a short time only, a license to trade; or, if he resided there for a permanency, that the mayor should ascertain whether he was a "Free man;" and if so, that he should enrol him as a *burgess*, being one of the *permanent free inhabitants* of the place; and in ascertaining whether he was "free," the fact of his being a member of a trading guild (if any such existed), was decisive proof of his freedom, because a *villain* could not belong to such a body.

* Ll. Æthelst. sec. 10, 12, 13. Ll. Cnuti, sec. 22.

Edward
the Elder.

It is also worthy of observation,* that the *Six Men* who were to decide between the parties, somewhat in the nature of a *Jury*, were to come from the "Burh Shire," where the man had his home:—or in more modern language—from the neighbourhood—"de vicineto." The "Burh Shire" is a material description of the district with reference to which this provision is made.

It has appeared before, that the general divisions or districts of the country were denoted by the term "Shire:—" hence the expression, the subject matter relating to sales within towns, is "Burh Shire." We have seen before, that Burh Breach is the term applied to the breaking the peace of the town:—therefore it is clear, that in both instances "Burh," applies not to the general division of the country into shires, but to that division or district which was a *town*, and where there was a reeve to perform the functions required of him.

Sec. 2. The second section relates to those who deny justice to others; and the distinction is taken between "Boc Land" and "Folc Land:—"The first clearly being, as we have seen in the 37th section of the Laws of Alfred, that land which an individual has had particularly appropriated to himself, having derived it from his ancestors;—whilst "Folc Land," which is placed in contradistinction with it, seems to be the land which was held by the people in common. It is also apparent from this section, that these matters of right were to be discussed before the *reeve*. A further description of the nature of Boc Land may be seen in the 75th section of the Laws of Canute; where, if a *man* of the lord flies from him he shall lose his land, and the lord shall have it; but if he has any "Boc Land," that shall be delivered into the hands of the king. The former being the land of the lord reverts to him; the other going altogether from the lord, and escheating to the crown.

Sec. 4. The king's *Witan* is spoken of in the 4th section;† and it provides for the better keeping of the peace; and that none should deny right to another under the penalties imposed.

* Ll. Æthelst. sec. 9 & 11.

† Ll. Æthelst. cap. ii. Introd.

The 5th section imposes punishment upon a reeve who does not govern according to right. Edward the Elder.

Sec. 5.

From this, it appears that the reeve had a jurisdiction, as in this section, he is to pay a fine, if he does not do justice according to the evidence given before him. This is applied to Reeves generally, and not specifically either to the king's reeve—the shire reeve—or the port reeve—and consequently may be taken as including the whole.

Pledge or surety—"borh"—which is to be given for him who is accused of theft. Sec. 6.

It is likewise declared, that no person shall harbour, or receive as a guest, any person of *bad repute*.*—and if any one neglects that law, and violates his pledge given to the people, he shall compensate for it as specified in the "Dom Bec:"—and if he should still act contrary to it, he shall lose the amity of all the king's subjects, and all that he hath. Sec. 8.

This and other provisions excluding offenders from the protection of the king and his people, and submitting him to the loss of liberty, lands, and goods, appears to be in conformity with the subsequent doctrine as to *præmunire*, as seen in the statute, 16th Rich. II. c. 5;† and establishes the intentness of the law for the prevention of *vagrancy*—the jealousy of temporary and *occasional residence*—and the severity with which these institutions compelled *every person to be responsible for all received within his house*—and those who acted contrary to this essential branch of police and good government, were to lose all their property; as being unfit to enjoy any possessions under that law which they contemned, and were to be subjected to a species of *outlawry*, by being driven from the society of all the king's subjects.‡

The ninth section recognises the loss of liberty by the accusation of theft, and the consequent subjection to servile labour. Sec. 9.

And the tenth section provides against receiving the man (probably meaning the bondman) without the leave of him to whom he first belonged.§ Sec. 10.

* Ll. Cnuti, sec. 23.

† See also Coke upon Littleton, 129.

‡ *Fœdus Edwardi et Guthrui*, sec. 6.—"utlati."

§ *Vide Ll. Æthelst.* sec. 22. cap. ii. sec. 1.

Edward
the Elder.

Sec. 11.

It is directed by the eleventh section, that the *reeve* shall always hold his *mote* once in four weeks, and shall take care that every man has his "Folc-right;" and that all litigation shall be ended.

No distinction is here made between the "shire gemote," or the "town or borough gemote;" and therefore it is probable that at that time gemotes of this description were held every where all over the kingdom, without any reference to the division of the country into particular or privileged districts.

THE LAWS OF ATHELSTAN.

924 to 940. These laws (in the introduction to which the reeves are mentioned) having first provided for tithes, speak afterwards of the "Alderman" and the "Reeve."

Sec. 2. The second section makes regulations for those men who have no lords—how they are to obtain "Folc-right"—and to have a lord assigned them in the "Folc-mote:"—which if they do not procure, they are to be afterwards treated as fugitives,* and any person is to be amerced for receiving them as guests.

Here a system of *mutual responsibility*, precisely corresponding in substance with the *Pledges* at the *Tourn* or *Leet* is clearly defined, as then existing. And it should be observed, that the folc-mote is spoken of generally; not as confined either to the shires, or to privileged towns:—and the probability is, that at that time the folc-mote was general, and every person who lived within certain limits, owed suit to it.

Sec. 3. By the third section, the lord who denies right and supports his bondman in wrong, if an appeal thereof is made to the king, is to pay a ransom;—and the lord who is conscious of the theft of his bondman is to lose him;—and if he does this often, he is to lose all he has; and the king's reeve, when cognizant of the theft, to suffer the same punishment.

It will be seen from this provision as to the lords, that they were responsible for the acts of their bondmen, if they were in any degree cognizant of them; from which it may be

* Ll. Æthelst. cap. ii. sec. 2. Ll. Ædmund, sec. 1.

inferred, that the lords were bound to watch the acts of their Athelstan. bondmen, and that the omission to do so was a species of misprision of theft.

The eighth section relates to those who have no land ; and provides, that if such a one serving in another county should be received as a guest by his relations, they might obtain for him "Folc-right;" and if he has committed an offence, they shall pay for it. Sec. 8.

This seems an important clause, both as it relates to the punishment of those who receive a bondman from another place as a guest, and also as it relates to his obtaining Folc-right by attending at the "Folc-mote:"—but in that case, his friends were to be his pledges.

The ninth section directs, that if any one should find his sheep, five men of his neighbourhood shall be named for him* (neahgebura), and he shall get one of them to swear with him that he will claim them in "Folc-right;" and if any one demands to appropriate them to himself, ten men shall be named to him, and he shall get two of them who shall take their oaths that they were born in his possession. Sec. 9.

This affords us another early trace of that system which subsequently produced the trial by jury, of which England is so justly proud.

And in the succeeding section the number of twelve persons, who are to act as compurgators, is expressly mentioned.† Sec. 11.

The 13th section provides for the repair of boroughs ("Burgh"), which is to be done within fourteen days after they have been perambulated. Sec. 13.

And the 14th section establishes mints in Canterbury, Rochester, London, Winchester, Lewes, Hastings, Cicester, Hampton, Wareham, Exeter, Shaftesbury—of different numbers, and in other boroughs—one. Sec. 14.

It would be matter of curious investigation, (but foreign from our researches,) whether the possession of a mint, being

* Vid. etiam *Judicia Civitatis Londoniæ.*

† *Judicia Civitatis Londoniæ.*

Athelstan. a matter granted by *royal* licence, was not also a characteristic of a borough.

Sec. 20. The 20th section provides, that if any person shall be absent from the "Gemote" three times, he is to pay for his contempt to the king;—and if this is known seven days before the Gemote, and he refuses then to do right, and to pay for his contempt, then all the elders who belong to that borough shall go and seize all that he hath, and take it in the place of a pledge for him.* And if any one who owes suit at the court refuses to go with the rest, he shall pay for his contempt to the king; and this shall be published in the Gemote, *that the king's peace might be kept*, and that every one may abstain from theft, at the peril of his life and all that he hath. And if any one does not abstain, then all the "Elders" of those who owe suit to the court, and who belonged to that borough, shall take all that he hath:—of which the king shall have half—and those men the other half, which they shall take in the place of a pledge. If he can get nobody to be pledge for him, they shall seize him. And if he refuses to yield, they shall kill him, unless he flies; and if any one should defend him, or should kill any of the suitors, then he shall be treated as the enemy of the king, and of all his friends. If he should fly, and any person should receive him as a guest, such person shall be liable for his ransom, unless he should dare to excuse himself, that he did not know he was a fugitive.

This clause is important, as clearly defining the proceedings in the King's Court for the administration of the Criminal Law, and which in after times was called the Court Leet; in which the same mode of taking pledges—compelling persons to perform their suit and service there—and to do law and right—was subsequently practised.

This section also shows the ancient nature and object of the "Folc-mote," then called the Gemote, which, in all its essential qualities, resembled the sheriff's tourn and leet. Every body was bound to attend, and to give sureties there—or, in the language of the law, "to be put or set in pledge,"—and for not so doing they were outlawed. The object of this system

* See also the Customals of the Cinque Ports, post.

also was the same as that of the Court Leet; viz. *to secure* ^{Athelstan.} *the peace of the realm*, and to prevent crimes. It should be observed also, that this provision is general, and applies to all the people—as well those residing in the counties at large, as those residing in boroughs—no distinction appearing to have then existed between those classes of the inhabitants.

In the section which relates to the ordeal, the number to be present is twelve. Sec. 23.

At the Introduction of the 2nd chapter of Athelstan's Laws, the king complains, "that his peace had not been so well kept as he wished;" and in further directions for the better preservation of it, he inflicts (as before) "the severest penalties of loss of life, and all that they have, against those who receive as guests, or harbour such as have offended against the laws. From which source alone," the king adds, "that 'Oaths,' 'Borhs,' and 'Pledges,' are all broken and violated."

The 1st section of the 2nd chapter providing (like the laws of king Edward) against the taking of the *bondman* of another person, proceeds to ordain, that if the lord should seek unjustly to condemn his bondman, he may purge himself of his offence, if he can, in the "Folc-mote;" and if he is innocent, he may claim as his witness or compurgator, what lord he likes; because the king adds, "I am willing that every one who is innocent, may attach himself to what lord he likes;" and every Reeve who neglects this, is to pay for his contempt to the king. The section concludes with directing, that there shall be named in the district of every Reeve, those who are known to be *credible*, that they may be the witnesses or compurgators in every dispute, by the oaths of all of them, without any selection.

Cap. 2.
sec. 1.

This section again establishes, that the "Folc-mote" or "Leet," was the place in which justice was to be administered to all, under the "Reeve;" and that a *jury* was to serve there to determine all matters that were to be inquired into—and they were to give their answers upon the oaths of all, without taking the decision of the majority, or determining by any ballot or vote.

Athelstan. Allusion is again made to the twelve compurgators; and in
 Sec. 2. the same section, the gate of the borough is mentioned,
 (Buphgeate.)

JUDICIA CIVITATIS LUNDONIÆ.

During the time of Athelstan, the "Judicia Civitatis Lundoniæ" are supposed also to have been framed, and it seems probable that they were; as in the introduction to them, reference is expressly made to the laws which were in this reign made at Greatanleam, Exeter, and Thunresfeldam. In this introduction, London is called a "*Byrig*" or "Borough."* And in the body of the laws themselves, provisions are made for the punishment of theft. In the division of the property of the thief, half is to go to the king, and the other half to the "Reeve shire," or to the people of the district over which the Reeve presided. Which is probably a strong proof of there being at that time a common stock for each of those local divisions.

Amongst these laws, provision is also made for tracing footsteps from one *shire* to another; a duty which is expressly assigned for the superintendance of the *Reeves of the shire*; and they are all enjoined, under penalty of contempt to the king, to give their best assistance to keep his peace.

In the course of these laws it is said, that the "Witan" had given their pledge to the archbishop of "Thunresfeldam," with "Ælfeah," "Stybb," and "Brihtnoth," the son of "Odda," that every "*Reeve*" should take *pledge* in his own *shire*, for all to keep the peace, as King Athelstan had advised; which was again confirmed at Greatanleam, Exeter, and afterwards at Faversham, and lastly at Thunresfeldam, excepting that there should be buying upon Sunday, and also without the town, with credible witness. And the provision for the keeping of the peace being repeated, the clause concludes with directing that the Reeve so offending shall be displaced from his office, &c. By a former law, the theft of a person under twelve years was to be excused; and no youth

* Ll. Cæd. Introd. Ll. Cnuti, 20th Sect.

should lose his life under fifteen, unless he should defend himself, or fly, or refuse to give himself up. In these laws also the relative situations, the qualifications, mode of becoming, and the station in society of the "Earl," the "Coloni," the "Thane," the "Common People," and the "Merchants" are specified—and the different ransoms for them all are particularly noted.

Judicia
Civitatis
Lundoniæ.

The constitutions of Odo command—"that no man presume to lay any tax on the possessions of the clergy, who are the sons of God, and the sons of God ought to be free from all taxes in every kingdom," &c.* A. D. 943.

This probably was the origin of the clergy being exempted from the burdens to which the people generally were subjected, and from the suit at the ordinary courts of the common law. But it appears from this and subsequent circumstances about the same period, that the clergy were subject to be assessed by their own body, and that every clergyman was bound, upon admission into orders, to find twelve bondsmen: in analogy to the pledges given by the laity in the courts leet.

THE LAWS OF C EDMUND.

The laws of CEdmund, like most of the other Saxon kings, relate especially to the *preservation of the peace*, 940 to 946.

1. Twelve months is the time allowed for paying the ransom of a man:—and these laws contain provisions similar to the former for the giving pledges and security for doing right.

Before we quit this period we should observe, that it was the duty of the bishop to be present with the "alderman" in their courts, which is one of the many proofs to establish the union at that time of the civil and ecclesiastical government, though in subsequent periods of our history they were separated.†

* Hen. Hist. iii. 264. Spel. Concil. t. i. p. 416. Wilkin. Concil. t. i. p. 212.

† Hen. Hist. iii. 262. Spel. Concil. t. i. p. 401.

THE LAWS OF EDGAR.

959 to 975. In the 2d section of the 2d chapter of the Laws of Edgar, relative to the rights of the people, it is provided, that "no one shall appeal to the king *unless he is denied law and right at his own home.*"

This affords a decisive proof of the anxiety of our ancestors, that the laws should, as far as possible, be administered locally—providing, nevertheless, for the weightier matters being submitted to the king.

The King's Reeve is also mentioned in an earlier part of these laws.

Sec. 6. In the 6th section, the "Gemote of the Hundred" is spoken of, and directed to be held as theretofore. The "*Burgh-mote*" to be three times in the year. The "*Shire-mote*" twice; and at the latter, the bishop and aldermen are to attend.

And also provides generally, that every man shall find his pledge, who shall produce him at all times to do right, and shall safely keep him; and if any one does an injury, and flies for it, the pledge shall bear what he ought to have borne. If it is a theft, and he can produce the thief within twelve months, the thief shall abide the judgment, and that which he has paid shall be returned to the pledge.

In these laws we see the "Sheriff's Tourn," the "Hundred Court," and the "Burgh-mote" most accurately defined. The Hundred Court is directed to be held as heretofore, *i. e.* according to the Common Law. The Sheriff's Tourn is to be held (as is required by many subsequent laws) twice a year—at Easter and Michaelmas;—and the "Burgh-mote," or "Court Leet," is to be held three times a year:—in conformity with which, many boroughs are still found to hold them oftener than twice a year, which are the periods limited by Magna Charta, and other statutes for holding the Sheriff's Tourn: but in them there is a reservation of the right of holding them oftener in those places where it has been cus-

tomary to do so. The custom, doubtless, being founded upon this early provision of the Saxon laws relative to "Burgh-motes." Edgar.

One of the important functions of the "Tourn" or "Leet" is here also specified. Every man is there to find his pledge—who is to have him at all times forthcoming to do right; and if he does not, the pledge is to be responsible for him—upon which principle the firm basis of the simple, but practical—police of our Saxon ancestors was founded.

Persons of *infamous reputation* seem at all times, in the early periods of our institutions, to have been dealt with as not entitled to the benefits or protection of the law:—and, according to the language of the Charter of London, which we shall see hereafter, as ordinarily translated, they were not "Law-worthy."* For having by their repeated breaches of the law shewn their contempt of it, and that they would not be bound by it, they were in return excluded from those rights under it, which others enjoyed—and were considered as out-laws. Thus we find in this section, that every man who had been *often accused* in his borough, and was found *unfaithful* to the people, and did not attend the "Gemote," that is, the Sheriff's Tourn, or Court Leet, those of the "Gemote," (viz. the *suitors* of the Court Leet,) should go to him, and he should find a pledge if he could; if he could not, he was to be seized in any possible manner, whether alive or dead, and he should lose all that he had, and pay to his accuser the just ransom of his crime; and the lord should have half his land, and the hundred the rest. The latter provision for the forfeiture of half his property to the hundred, being an indemnification to them for the liabilities they might be subjected to on account of the acts of the criminal. Part of which principles are left in operation to this day, in proceedings against the hundred. Sec. 7.

The last section mentions Winchester as the place where the standard for the general coin of the country was to be kept. Sec. 8.

* Vide etiam Const. Æthelredi.

SUPPLEMENT TO THE LAWS OF KING EDGAR.

In the supplement to the laws of king Edgar, it is expressly provided, that in every borough in every shire, there shall be a king's court, as his father had. And that every man, whether within or without a borough, shall be under pledge; and that wherever it was not then so done, it should be, in every borough and in every hundred. In every borough there shall be 33 elected to be witnesses;—that is, compurgators in small boroughs; and in every hundred 12, unless more are willing. And every one shall buy and sell with a witness, whether in a "borough" or in a "wapentake;" and every one who has been elected to be a witness, is to take an oath that "*neither for money, love, nor fear, nor any other cause, will he say any thing but the truth;*" so that there may be two sworn men present to witness every sale. And a merchant going to pursue his merchandise, was to inform his neighbours where he was going, and when he should return.

These provisions (which are followed by others for the same purpose) further define and extend the system of giving security by pledges; and includes within it, not only the boroughs where larger populations would be collected together—but also places without the boroughs, as hundreds and wapentakes—and thus makes the system general throughout the country. The number of the jury or compurgators is expressly defined; in large boroughs they are to be 33, in smaller they are limited to 12; and as the minimum would be the most likely to be generally adopted, (these duties being at that time burdensome,) it is probable that from hence sprung the number of 12 for a jury. And this early difference in the numbers, the less being applied to the smaller boroughs, may have given origin to the grand and petit jury. The subsequent provisions shew further the great anxiety of the legislators of that day, to make all dealings and merchandise public, as the best means of preventing theft;—to which object many of the subsequent provisions also relate, requiring that the mer-

chants should declare the purchases they had made, which if they did not,* the men of the town were to acquaint the elder of the hundred, and then they were to be free from punishment; but the merchant was to be punished for not communicating it to his neighbours, and the lord was to take a moiety of his land, and the hundred the other moiety. At the close of this supplement, the "alderdome"—as the district over which the "earl" or "alderman" presided—is mentioned, as well as the "aldermen."

Edgar.

THE CANONS OF KING EDGAR.

In the canons of King Edgar it is expressly provided—that nothing between priests shall be submitted to secular judgment, but their own companions shall settle it, or it shall be transferred to the bishop. This is a very early commencement of the partial division of the ecclesiastical jurisdiction. And the same canons provide—that the "*Folc-mote*" shall not be held upon a Sunday.† At the close of these canons, in that part which relates to confession, in the enumeration of the different classes of society, as the rich and poor, young and old, the ecclesiastical and lay, the only divisions founded upon their station or condition in life, is that of "Freemen," and "Bondmen."

THE LAWS OF ETHELRED.

The laws of Ethelred again direct the giving of pledges, and make further provision for the breach of them; the ransoms to be paid—the punishment of flight—and the ultimate punishment of outlawry. "And they also state, that every lord is to have his "hired men" in his own pledge;—and he is to be responsible for their acts. The provisions for purchases and exchanges in the presence of pledges and witnesses are repeated—and also for the proceedings against those who are of *bad repute*.

979 to
1016.

* Vide Ll. Northumbrensiū Presbyterorum. Ll. Cnuti, Sec. 22.

† Vid. etiam Ll. North. Presb. : Const. Ænhamense ; Ll. Cnuti, 15.

Ethelred. But we must not fail here to observe, that the law of Ethelred requires expressly, that the persons who are to give pledges are to be "*Freemen*,"—not confining the provision "to Free Tenants" only—but to "*all freemen generally*."

In the 5th section of the league which Ethelred made, the breach of the peace within the borough is expressly spoken of—and the 6th section relates entirely to that subject, and provides that if the peace is violated within the borough, the "*Burgh Wara*," or "*People of the Borough*," are to require from the nearest relatives of the homicide the ransom of his head; and if they will not, the *Alderman* shall; and if he will not, the King shall go thither: and if he will not, the whole "*Alderdome*" shall be without the King's peace.

Sec. 6. This section is worthy of particular observation. It appears in the first place that a town was called by *þyrg*:—that the people in the town in their congregated capacity were called *þurgh*:—that besides these there was a class of persons who were to be first responsible, the *heafeds*, perhaps the land-holders:—in their default the "*ealþoþman*" or head man of the place, was to be compelled to take the responsibility upon himself; and in case he would not do it, then the King, and in that default, we have the striking provision that the *ealþoþdom* or *Aldermanry* was to be *unþyfe*—that is, *unfrithed*—or excluded from the obligations and privileges of which all other places partook. It may be a question what the *ealþoþdom* was:—whether it was any division of the shire, or whether it was the town or *Byrg*; the probability is that it was the former.

Sec. 8. Section 8 refers again to outlawry.

Sec. 9. A strong inference is afforded by the 9th section, that the *þoþs*, or pledges, related at that time to the whole county, and not alone (as by modern usage) to boroughs: for at the commencement of the section, the *þoþ*, or pledge of a man who is found with the goods of another in his possession is mentioned—and in the next and succeeding sentences, witnesses from other *shires* are spoken of, and different times allowed for their coming, according to the distance of the *shires*.

In the 2nd Book of the Constitutions of Ethelred, further

regulations are made for the preservation of the peace, particularly for the greater boroughs: and it is provided, that where the pledge is given in the wapentake, if it is broken, it shall be compensated for in the hundred. And directions are given for holding the Gemote in every wapentake, and twelve of the elders and the Reeve with them, shall swear that they will not accuse any innocently, or conceal any that are guilty: and in the distribution of the fines, half is to be given to the lord and half to the wapentake: from which it seems clear, with reference to the former laws, that the hundred and wapentake were similarly circumstanced, and were probably synonymous.

It is a common opinion, that the only *Freemen** at this period were the Freeholders—but the general tenor of the Saxon laws proves the contrary, as well as the particular methods of acquiring Freedom, which were by no means *limited to tenure*. We also find that *Freemen* are spoken of generally without reference to their lands. Again, in other parts of the laws, and particularly in this, persons possessing lands are expressly called by that name—lanber mannum.

THE LAWS OF CANUTE.

The laws of Canute were made at Winchester.

1017
to 1035.

The secular provisions are for the repair of boroughs and bridges, by the levying of “Burg-boot” and “Bridge-boot.” And in the 16th section, the law is again repeated, that a man shall not appeal to the king unless he cannot have right in his own hundred—that is, in the “Gemote of the Hundred.”

Sec. 16.

The law is also repeated for holding the “Burgh-motes” and “Shire-motes,” before the bishop and the “alderman.”

Sec. 17.

The 18th section provides, that no person shall take cognizance of any other man within or without the shire, before he has three times demanded justice in the *Hundred Court*; and if the third time he cannot obtain right there, he shall go for the fourth to the *Shire-mote*, and the *Shire-mote* shall appoint

Sec. 18.

* Sen. Con. de Mont. Walliz.

Cannte. him a fourth day; and if he should then fail, then he shall be at liberty to obtain his right wherever he can.

Sec. 19. By the 19th section—*every FREE MAN who wishes to be "Law-worthy,"** shall place himself in the Hundred or *Decenna*: otherwise, after 12 years he may be charged with the default, and unable to enjoy any privileges; so that every man, whether he be the head of a family, or a follower, shall come to the Hundred Court, and be put in pledge, and there keep his pledge, and be forthcoming to do right. And it states, that many violent persons, if they could, and ought, would wish to protect their men in any manner they may think fit, whether *freeman* or servant; but the king says he is unwilling to suffer that injustice. And every man that is 12 years of age shall take his oath that he will not be a thief, or consent to a theft.

This appears to introduce (at least for a time) an important alteration in the law. Before, as we have seen, the *Free Men* only were bound to do suit at the "Gemote," and to be sworn and give their pledges there:—the lords being responsible for their servants or bondmen:—but it seems that the lords had, under colour of this law, been guilty of some irregularities, which the king was desirous of correcting.—And therefore, contrary to the former law, he directs that every person whatever shall take the oath which is prescribed. But this may help to solve a difficulty which has occurred to many. It has been said, that all persons residing within the borough, that is all the *Resiants*—whether free or villains, whether householders or inmates—were bound to attend the leet.—And therefore, the owing suit and service at the leet could not be the test of a person being entitled to be a free man. But an accurate consideration of this law will remove the difficulty. Before, the suit was certainly confined to "free men:"—Here it is extended *to all*. But then it must be observed what each has to do. There is a clear distinction between the freemen mentioned at the commencement of the section, and all above 12 years old, who are described at the close—including bondmen as well as free.

* See London Charter, Will. I.

The former are required to be enrolled in the hundred or Canute.
 decenna, and to give their pledges there—but the latter are
 only to take the oath prescribed. The result, therefore,
 seems to be, that this law requires every person, be he bond
 or free, should be present at the court leet, and there take an
 oath, which, in more modern times, was called the “oath
 of allegiance;” that none but freemen were enrolled amongst
 the lists of burgesses as freemen, and who gave their
 pledges to be forthcoming to answer the law,—by which last
 acts they became of that class of persons described in our
 legal records as the *liberi et legales homines*—the free and
 lawful men.

And from a subsequent section, the 28th, it is apparent, Sec. 28.
 that the oath to be taken by the bondmen was all that they
 were required to do, and that the responsibility of the lords
 for them, was not intended to be interfered with—because
 that section declares again, that every lord shall have his
 servants in pledge.

The 23rd section provides—like the laws of Ethelred—for Sec. 23.
 the apprehension of infamous persons, not appearing at the
 Hundred Courts, and requires—that all their goods should
 be seized, but says nothing of their land ;—which, unquestion-
 ably would have been the case, if the freeholders alone were
 the persons who owed suit at that court.

It is provided by the 25th section, that no one shall receive Sec. 25.
 a servant for more than three nights, unless the person he
 before served should have sent him; nor shall any person
 dismiss his servant who is accused, before he has purged
 himself of all suspicion.

The pledge from those of bad repute, is required in the Sec. 30.
 30th section, and punishment is to be inflicted if they do not
 give it.

The 31st section ordains that there shall be one law for all Sec. 31.
 the boroughs :—a provision highly important, with reference
 to the charters, all of which will hereafter be shewn to be
 essentially the same.

Provision is made in the 32nd section, for foreigners and Sec. 32.
 friendless men, who cannot obtain pledges.

Canute. It is declared in the 37th section, that if any ecclesiastic
 Sec. 37. or foreigner should be accused, then the king shall be to
 him in the place of a friend or patron, unless he have some
 other lord.

This corresponds with the system established by the former Saxon Laws, that for "freemen"—their friends and relations should be pledges, and the lords for their bondmen. The inference arising from this clause is, (in conformity with the law of the Court Leet,) that no ecclesiastic was liable to do suit or service there, or give his pledges:—and therefore such a person must have somebody to answer for him. Consequently this law provides—that the king should stand in that place, as well for an ecclesiastic, as a foreigner, who would necessarily be in the same predicament.

Sec. 53. The 53rd section provides the ransom for the breach of pledge, according to the rank and station of the offender.

Sec. 64. The 64th clause ordains—that if any body shall harbour any person who is excommunicated or outlawed, he shall expiate his offence with the loss of his life and possessions.

Sec. 76. From section 76 it appears—that the possession of lands and the title to them, was settled before the whole shire or borough; for it is provided by that section, that if any one could shew his title to land by the testimony of the shire, and he dies possessed of it, he might give it to whom he liked best.

Sec. 79. And the 79th protects every man in peace, going to or returning from the Gemote.

EDWARD THE CONFESSOR.

1042 It seems that during the period the Danes partially estab-
 to lished themselves in this country, many of the Saxon laws
 1066. were neglected and superseded; and it was a fertile source of complaint, that "right was altogether buried in the kingdom, and at the same time, the laws and customs were laid "asleep;"* for in their times, a depraved wilfulness of the

* It is said, the Saxon laws were superseded for a period of 60 or 70 years.

“people—force—and violence—rather reigned in the land
“than judgment.”

Edward
the
Confessor.

However, efforts were subsequently made, to ascertain what the good laws really were in the time of Edward the Confessor; and after William the Conqueror had obtained possession of England, in the fourth year of his reign, by the advice of his barons, he caused to be summoned all the nobles, the wise men, (who, probably, in the Saxon times were called the “Witan,”) and those who were skilled in the law, that he might hear from themselves what their laws—their rights—and customs were. There were, therefore, 12 persons elected from every county, and they were sworn before the king, that as far as they could, they would directly, neither turning to the right hand nor the left, straightforwardly make known what had been sanctioned of their laws and customs; omitting nothing—adding nothing—nor by prevarication—changing any thing.

The laws so framed have been always called the laws of king Edward the Confessor—and no doubt they give us a fair representation of many of the laws and customs which prevailed in his time. But it is also evident, there are many matters added, which could not belong to the time to which they are attributed; and they are not further authenticated by appearing in the Latin language—rather than the Saxon. We shall extract only such from them as may be material for our present purpose.

In the 7th section, pledges are mentioned, as in the former Saxon laws:—those who do not appear to do justice are spoken of as outlaws, (or, in the emphatic language of the times,) as “Wolf’s head,” “Lupin^w enim gerit caput:”—and it is stated to be the common and general law of all outlaws. This continued to be practised in the reign of King John, when there is a record of a person outlawed upon an appeal of murder, for not appearing at three county courts. It is said that, as he would not be amenable to the king’s peace, he should be in no better condition than a wolf, “gereret lupin^w caput.”*

Sec. 7.

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* MS. Linc. In. Lib.

Edward
the
Confessor. The *legales homines, or lawful men* of the shire, are mentioned in the 9th section:—and the Courts held by the

Sec. 9. Barons of their own men. And if any plea concerning the men of other Barons should arise in those Courts, it should be pleaded before the King.

Sec. 11. The Church, by the 11th section, is declared to be free, and quit of “Dane gild;” a circumstance worthy of observation, because it will be subsequently seen, that the Church was for a long time after held free of this, and other temporal charges.

Sec. 12. Boroughs and Cities are mentioned in the 12th section—the archbishops’ men, “villains,” and “soke men”—are spoken of, and are to pay one sum, whilst “*free men*” are to pay another. The peace of the four ways is mentioned—Watlingstrete, Fosse, Hikenildstrete, and Ermingstrete; but the smaller ways which led from city to city, and borough to borough, are to be under the law of the shire.

Sec. 15. The 15th section provides, that if any one is murdered, the murderer shall be demanded of that vill in which the murder is found; and the vill is to have a month and a day to find him, and if they do not, 46 marks are to be levied upon the vill: but if the money cannot be raised by the vill, then it is directed to be raised from the hundred:—but as the vill might be altogether blended with the hundred, the Barons provided that it should be collected from the hundred.

Sec. 16. A reference to the laws of Canute is made in the 16th section.

Sec. 18. The pardon of the king forms the subject of the 18th section—and provides that the person who is pardoned, shall give his pledges to keep the peace and hold to the law, otherwise he shall be banished.

Sec. 19. The 19th section relates to captives—enumerating cities—boroughs—castles—and vills—all of which may, therefore, reasonably be assumed, to differ from each other:—and were we now to describe them, from what we have seen of the Saxon institutions, and what we have collected from subsequent documents and charters, we should say that *every*

city is a borough, but not every borough a city:—and that both of them returned members to parliament;—the former not as a city, but as a borough:—that the *castle, whether of a city or borough, was distinct from it*; as many still existing abundantly testify;—that a vill was a small town where population was collected together, but not being of sufficient importance to be made a borough, remained part of the county in which it was situated.

Edward
the
Confessor.

The rest of the section provides for voluntary transportation, in case the king should spare the criminal's life; and any body receiving such a criminal, is to pay a fine for it;—double the second night;—the third night, he is to be treated as his guest, and the host is to be considered as a participator in the crime. It also provides that the wives of such criminals, suspected of being participators in the crime, are to purge themselves from it:—then they are to be *legales* or *law-worthy*.

The 20th section describes with particularity, that important branch of the Saxon institutions which relates to *free boroughs*, and states, “that moreover there is a security of the highest and most important description, by which all are protected in the surest manner;—that every man should bind himself under the security of a pledge, which the English call *ƿreoborge*—and the Yorkshire people alone, *tæn manna tala* (the ten man tale).” This security was given in the following manner. Every body in every vill of the whole kingdom, ought to be under the *pledge* of the decenna, or ten men—so that if any one of the ten should incur a forfeiture, the nine should produce him to do right—but if he should fly, 31 days should be allowed him by the law; and being sought, and, in the meantime, found, he should be made amenable to the justice of the king; and should “forthwith make good with the property out of his pocket for the injury he had done, and if he did not do so, then justice should be executed upon his own body.” But if he could not be found within that time, as there was one capital person in every *free borough*, who was called the *Head Free Borough*, (or as the term is in use to the present day, the “*Head Borough*,”) “he

Sec. 20.

Edward the Confessor. "shall take two of the better of his own *free borough*, and "he shall take also the *Head-borough* and two of the better of "the *free boroughs* out of each of the three neighbouring "free boroughs, and so himself making the twelfth, he shall "purge himself and his *free borough* of the forfeiture and "flight of the criminal; but if he cannot do this, he, with the "free borough, shall make good the injury from the property "of the criminal as far as it will go; and when it fails he shall "make it good from himself and his free borough; and shall "compensate, as far as justice requires, according to that "which shall be lawfully adjudged against them; but as to "the oath to be taken by the three neighbouring free burghs, "they shall swear that they will never be guilty—and if they "ever can, they will take the culprit and bring him to jus- "tice—or they will declare where he is."

Sec. 21. ~ The 21st section relates to the archbishops, bishops, earls, barons, and all who have sac and soc-toll, them, and infangthef:—who are all to have their own soldiers and proper servants—that is to say—their dish bearers—a cup bearer—purse bearers—chamberlains—bakers—and cooks, under their own free pledge:—so that if they incur any forfeiture, and a hue and cry of the neighbours is raised against them, the lords shall hold them to right in their own courts.*

Secs. 22, 23, 24, 25, and 26. The 22nd, 23rd, 24th, 25th, and 26th sections respectively describe the meaning of soc, sac, toll, them, and infangthef;—the first two importing jurisdiction over the territory which belongs to the lord;—the third referring to the liberty of buying and selling;—the fourth relates to the forfeiture of stolen goods—and the fifth to the jurisdiction over thefts:—concluding with the general statement, that those who have not these privileges, are to do right in the hundreds, wapentakes, and shires.

The 27th section relates to guests:—and provides, that if any one should receive in his house a private person, a stranger, (who in Saxon are called cup uncup) may keep him for two nights as his guest:—and if he should commit any forfeiture, the lord shall not incur the loss for his guest:—but if an injury

* Vide Bracton, post.

should be done to any one, and he should appeal to justice respecting it, asserting that the injury was done with the consent of the host, he shall with two of his neighbours, who are *legales homines*, or *law-worthy men*, purge himself by his oath, both of the consent and fact; and if he has not such compurgators, he shall make forfeiture and compensation for the injury. But if he should receive his guest for the third night, and he should make forfeiture to any person, he shall have him to do right, as if he were of his proper family; which in Saxon is called *þra nıht ȝeft—þrūð nıht aȝen hne*. But if he cannot produce him to do right, he shall have a month and a day to do it;—if the culprit can be found, he shall make good the injury he has done and make amends for it, and also of his body, if it shall be so adjudged;—but if the culprit does not do it, then the host shall;—and if he is suspected, shall purge himself by the judgment of the hundred and the shire.

Edward
the
Confessor.

It will be observed that these provisions are in substance the same as those we have seen before in the earlier Saxon laws; but they are more minute, particular, and precise. For, as population was increasing, and questions connected with these matters became more frequent, the practical application of the Rules would be better defined, and more easily described, which appears to have been the object of this amplified and elaborate law; and it should be observed, that the franchises of *sac* and *soc*, and the other liberties, are here first mentioned, long after the establishment of the *Shire-motes* or *Burgh-motes*. Sec. 27.

Section 28 provides what is to be done when cattle or money are said to have been found;—and which are to be inquired into in the Lord's Court, if he have a separate jurisdiction; and if not, in the Hundred. Sec. 28.

This section appears most clearly to define the limits between the sheriff's jurisdiction and that of the lord:—and removes one of the great difficulties which has occurred to many authors, in considering the court leets granted to the lords of many manors, although they were not boroughs. This section establishes, that, if the lord had full jurisdiction,—equal to that of the sheriff,—viz. that of holding both cri-

Edward
the
Confessor. minal and civil pleas in a court leet, and in his court baron,
—as the sheriff had in his tourn and hundred courts,—
then the jurisdiction of the sheriff would be excluded; and
in any matter, either civil or criminal, he would direct the
lord to provide, that justice should be done—the lord having
the same jurisdiction as the sheriff. But if the lord had only
a partial jurisdiction—either with respect to the subject to be
inquired into—or the persons to be subjected to the inquiry :
—as if he had only the civil jurisdiction before referred to in
the Saxon laws, of settling civil disputes amongst his people—
then the sheriff would be obliged to interfere in all criminal
matters.—Or if he had only jurisdiction over his own tenants,
then the freemen and all others residing in the district, would
be under the jurisdiction of the sheriff, who would be obliged
to interfere. And in neither of these cases would the
sheriff's jurisdiction be ousted; but the place, though the
land belonged to the lord, would continue to be part of the
shire.

Hence it is, that in boroughs where the jurisdiction, civil
and criminal, was complete:—and where a reeve, mayor,
bailiff or other officer of the king existed as a substitute for
the sheriff—then the sheriff was altogether excluded. But
where the lord had only his court baron—and there was no
officer substituted for the sheriff—then his jurisdiction con-
tinued, and the place remained part of the shire. And this,
under such circumstances, would continue to be the case,
and the place would be subject to the general authority of the
sheriff, notwithstanding there should afterwards be a grant
of a court leet, which was common for ecclesiastical posses-
sions, as well as for many manors. Of the former we shall
hereafter find a striking instance in the case of the two Uni-
versities:—and the latter is abundantly established by the
numerous grants of court leets to be found upon the Patent
Rolls.

Sec. 29. The 29th section declares the Jews, and all their goods, to
belong to the king.

Sec. 30
and 31. The 30th and 31st sections require those who have the care
of the *peace* to preserve it.

Provisions are made by the 32d section for the adjustment of smaller disputes in the "decenna;" and of more considerable questions in the hundred court. Edward the Confessor.

The 33d section speaks of the wapentakes in the north;— and the hundreds in the south of England. And proceeds to describe the manner in which the wapentake is to be held. Sec. 33.

The 34th section relates to the tithings and lethes, in each of which are included the hundreds under the reeves of the tithings, to whom were referred all causes which could not be settled in the wapentakes:—and what could not be settled in the tithings, were to be determined in the shire. Sec. 34.

The 35th section speaks of the reeves of the shire, the wapentakes, the hundreds, the boroughs, and the towns. The greeve is said to be synonymous with lord, and to be derived from "ꝥꝛeþ," or "peace;"—it being his particular duty to see that peace was preserved: and that anciently, the English name was "Alderman," who is described as having had in the boroughs the same authority as the reeves had in the hundreds and the wapentakes. The Folc-mote is directed to be called together by the "*Mot Bell*:"—and is said to have had the name of Folc-mote, because it is there *all the people who are under the protection, or in the peace of the king, ought to come*:—and BY THEIR COMMON COUNCIL,* provide for the indemnity of the crown, and for repressing the insolence of wrong doers, to the common good of the kingdom. And, that there all ought to come once in the year, in the kalends of May, and with their faith and oath unbroken, they should unite themselves together into one body, AS SWORN BRETHREN, to defend the king against strangers and enemies, and that they would be faithful to the king—as well the princes and earls, as all the chiefs of the kingdom, and free men;—who should all swear their fidelity to the king before the bishops of the land. And thus king Arthur is said to have united the kingdom of Britain, and king Edgar to have restored it after a long interval. And it is added, that all freemen ought, according to their means, to defend the kingdom. Sec. 35.

* See the Ipswich Documents in the Reign of King John.

Edward
the
Confessor. The 36th section, relating to the Herotocks, does not apply
to our present inquiry;—farther than that they appear also
to have been elected in the “Folc-mote,” which Hume, in
Sec. 36. common with many other authors, erroneously conceived to
be a meeting of the “freeholders.”*

In truth it was a meeting of the “*free men*,” as the laws before fully prove. Every man is to be protected, going to and coming from the “Gemote:”—and it is said, that there ought to be another Folc-mote every year, in the kalends of October, when the sheriffs and headboroughs were to be elected. *Watch and Ward* were to be duly kept;—the Shire-mote to be held twice in the year; and the Hundreds and Wapentakes twelve times, being summoned seven days before. In *London* (which is described as the head of the kingdom and the laws) a court of the king is directed to be held in the hustings, upon Monday in every week. At the conclusion of these laws of King Edward, the former clauses against buying and selling without pledges and witnesses are repeated, and inquiries respecting them are directed to be made by the better men of the borough, town, or hundred, where the purchaser *dwelt*.

We are now arrived at the close of those laws which are called King Edward’s, but which were clearly compiled in a subsequent period. However we may be satisfied that we have in them the substantial form of that system upon which, as a firm and solid basis, the excellent—free—and practical system of police of our Saxon ancestors was founded. And as these were collected from tradition in a later period, we may assume that this system continued to be the great object of desire to the people at the time that the compilation was made, carrying their existence and approval down to a later æra in our history. We find the result of this system to be, that the country was divided into “Shires,” “Hundreds,” “Towns,” and “Boroughs;” for Wapentakes and Cities, differing only in name from Hundreds and Boroughs, we may for the sake of simplification omit:—That over these districts the King’s officer called the “Reeve” presided—

* Appendix, vol. i. Note I.

and that his duty consisted in preserving the King's peace—
 prosecuting and punishing "murder," "rapine," and "wrong,"
 —and making those who committed such offences respon-
 sible to justice for their conduct. This was to be effectually
 practised, by making every man by his own oath, and by his
 pledges, to be forthcoming at all times to do what justice re-
 quired of him.—The great divisions of society were first—those
 who were of "free condition," and were to be responsible for
 themselves—next, those who were dependent upon others,
 and were answered for by a deputed responsibility. The
 former, the "free men," in the "Shire Gemote," or in the
 "Borough Gemote," attended and swore for themselves,
 finding their own pledges:—the others, were answered for
 by the lords in their own courts.

Edward
 the
 Confessor.

Society

Though it was necessary to particularize some of these
 laws for the information of the reader, it is unnecessary to
 pursue the extracts further; because the substance of them,
 as far as is requisite for the purpose of this Inquiry, is con-
 tained in the short summary above. Nor need more be
 added, excepting that the mode of attestation—of purgation—
 and decision—at that time, was by *twelve sworn compurgators*
 or witnesses; being the origin of that system of trial by jury
 which, fortunately for this country, has been continued down
 to the present day. By the same institutions it was wisely
 ordained, that public responsibility before the eyes of his
 neighbours, should be submitted to by every man, claiming
 the enjoyment of public rights, by taking the oath of alle-
 giance to his sovereign, and binding himself by oath and
 pledges, to do right to his neighbour, and submit to justice
 under the sanction of the law.

Before we leave this period, it should be observed,
 that even after the close examination we have made of
 the Saxon laws,—and the numerous extracts which have
 been submitted to the reader—there is not a single trace—
 from the commencement to the end—of any thing in the
 slightest degree resembling a Corporation; nor of any
 thing that warrants the supposition, that the *Revel*,
 either of the shire, or of the borough—or the inhabitants

Edward
the
Confessor.

within the shire or borough—had any power of selecting either individuals, or any class of persons, who were to be distinguished from others, excepting by that broad distinction to which we have before alluded—of the freemen—and those dependent upon their lords. The language of all the laws, from Ethelbert to Edward the Confessor, is the same, “*Omnes liberi homines—every free man*”—is to be in pledge, &c. In other places—*universi quicumque*—and other words of universal and general application; nothing justifying any selection, but that founded upon irresponsibility from defect of property; general bad repute; or infamy of character, to which we have already referred in going through these laws, and to which we shall have occasion again to allude in the subsequent histories of several of our boroughs.

Charters.

The few municipal charters of the Saxon Kings which exist at the present day in their original language are granted to the Buph-papa of the respective towns. Latin versions of others are also to be found upon the Patent and Confirmation Rolls; and there is no reason to doubt that the term “*Burgenses*,” which occurs in them, is the equivalent, or translation, of the term Buph-papa of the originals. The question therefore is, who were the persons intended by the term “*Burg-wara*;” whether a selected body—an exclusive corporation—or the whole of the responsible free inhabitants of the place, duly sworn and enrolled.

Papu (waru) signifies a man;—but Lye tells us, without reference to the subject before us, that this word, when compounded, always means “*inhabitant* :”—for which he cites examples from the Saxon translation of the Scriptures. It seems therefore clear, that the whole of the “free inhabitants sworn and enrolled” were included in this term; and we believe it will be impossible to produce any passage from the Saxon Chronicles—laws—or other writings—in which the term is used in a limited, partial, or exclusive sense.

That the word Buph-papa was not applied restrictedly to a portion only of the inhabitants of a town, may be established by extracting a few passages from the Saxon Chronicle, in which it occurs.

The first place in which this word appears is in 616, where it is said, "Mellitus became Archbishop—he was therefore Bishop of London; but the inhabitants of London (Lundun-pape) where Mellitus had been, were become heathens."

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It will be seen hereafter, that the first Charter of London, granted by William the Conqueror, is to the "*Burgwara*."

In 894 it is said, "They (the Danes) then went to London (Lundun-býrg), and from thence, with the 'inhabitants of the borough' (Buph-papu) and those who had come to help them from the west,—they went eastward, to Beam-flet."

In the following year it appears that the Danes fought with the South Saxons near Chichester; but the "inhabitants of the borough" (Buph-pape) put them to flight, slew many of them, and took some of their ships.

In 896, the Danes having fortified their fleet near the mouth of the river Lee, "a great part of the inhabitants of the burgh" (Buph-papa) and others, endeavoured to destroy the Danish fortifications. And in the same year the Londoners are described by another word, as the men of London, thus,—the "men of London borough" (London býrg) destroyed the ships of the Danes.

In 944, the Danes came to London with 94 ships, and fought against it, and endeavoured to burn it:—but they suffered there more loss and damage than they ever thought that any "inhabitants of the burgh" (Buph-papu) could effect, for the Holy Mother of God, in pity to the citizens (Buph-pape) delivered them from their enemies.

In 1012, all the great men, both clergy and laymen, of the English nation, were assembled at Easter, at London, near to which the Danish army then was, with the Archbishop of Canterbury their prisoner; when a great commotion arose in the army against the Archbishop, because he refused to offer them any money for his ransom, and forbid others to do so; and in this tumult the Archbishop was slain,—"but the 'inhabitants of the borough' (Buph-papu) bore away his body in the morning, and took it to London."

In 1013, the Danes arrived at Oxford, and the "inhabitants

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Chron.

of the borough" (Buph-papu) immediately surrendered, and gave hostages. Thence they went to Winchester, and did the same; but when they came to London, the "inhabitants of the borough" (Buph-papu) refused to surrender, but opposed them in a severe battle. The inhabitants of the borough of London (Buph-papu), however, at last submitted.

In 1017, Canute invaded Mercia, and the Atheling, Edmund, began to collect an army; but the soldiers refused to accompany him, unless the king went with them; and the "inhabitants of the borough" (Buph-papu) of London came to help them.

In the same year, after the death of Ethelred, all the counsellors or great men at London, and the inhabitants of the borough (Buph-papu) elected Edmund king; and afterwards the "inhabitants of London" (Lundene-papu) made a truce with them.

In 1018, a tribute of 72,000*l.* was paid for all England, besides 11,000*l.* which the "inhabitants of the borough of London" (Buph-papu) paid.

In the commotion which took place in Devon in 1048, between Eustacius the legate and the townsmen of the place, after Eustacius and *his men* had slain the master of the house who refused to lodge some of the arrogant strangers, the townsmen (Buphmen) killed 19 of the legate's attendants, and the king was very angry with the "inhabitants of the borough" (Buph-papu).

During the Conqueror's time, in 1068, the Popt-men, or townsmen, of York, are mentioned. Popt being the Saxon for town; and near the close of this volume, in the year 1135, we find mention of the *London Folk*, Lundenire polc.

The Saxon Chronicle, therefore, in common with all writings coeval with it, ^{and subsequent} ~~and posterior to it~~, affords no mention, direct or indirect, of any municipal corporation—using that word with its ordinary legal import. There are repeated instances mentioned of the foundation of different boroughs by the Saxon kings, which, for brevity's sake, we omit to particularise; but there is not the slightest allusion in any of these instances to any grant of incorporation; or to any

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creation of a select portion of the inhabitants who were to be the governors of the rest. The foundation of a town or borough universally refers to a collection of a number of houses in the same place;—and the *inhabitants* are always described by the one general appellation of Burghwara,—being, as we have shewn, the Borough-inhabitants, Burghmen, or Burgh-folk.

We have already explained from the Saxon laws, that boroughs were subject to their own officers, acting for the king, as the sheriff did in the county:—he being the reeve for the shire, the borough officer the reeve for the borough: documents of an early date prove, that a borough enjoyed peculiar local jurisdiction; by charters granted by the king to exempt the town from other jurisdiction, and to invest the reeve of the borough, and the inhabitants, with the power and jurisdiction which the sheriff of the county—or his superior, the earl—would otherwise have possessed. These jurisdictions, civil and criminal, were included in the grants of *sac* and *soc*—toll and them—*infangthef* and *outfangthef*, &c.—and in subsequent periods we shall find express grants of exemption from suits of shires and hundreds, and also of Courts Leet and Borough Courts, or Court of Pleas, the necessary consequence of excluding the Sheriff's authority.

The *burgesses* were the persons who enjoyed these exemptions and privileges:—and they were the inhabitants at large,—or at least the *free rateable lay population of the place*. It is hardly possible to read the passages above quoted from the Saxon Chronicle, without being convinced that they all refer to the general body of the inhabitants of each town. They cannot be supposed to allude to any partial or select body of persons, great or small, within it. And observing the silence of the compiler of this volume, as to any select—exclusive—self-electing number of persons in a town—composing a distinct corporation, is it probable, if such partial corporations did exist, that no traces of them should be found in history? Or is it probable, that under such circumstances, all contemporary writers would have used the general term,

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“burgesses,” or some term equivalent, without adding some qualification, if they intended to describe a part instead of the whole of the free and lawful inhabitants?

WILLIAM THE CONQUEROR.

1066. WE come now to that period of our history, in which a foreign king seized, by the power of his sword, the crown of England. It is, however, but an act of justice, and not altogether foreign from our subject, to rescue his character from the stigma affixed to it by early writers, and sanctioned by modern copyists, that this monarch was an inexorable conqueror, seizing the possessions,—trampling upon the rights,—and destroying the laws of the country his sword had won; substituting in their stead the severe and more arbitrary provisions of feudal tenure. It has been said, and truly, (for proofs still existing substantiate the fact,) that one of the great objects of his attention, upon his obtaining the throne, was the better administration of justice,—the securing to the people exemption from all unjust exactions:—and, as one of the most splendid acts to grace the triumph of a conqueror, re-collecting—reviving—confirming—and improving the laws of the Saxon kings who had preceded him:—of which we have decisive evidence in the collection of the laws of Edward the Confessor, the production of his reign.

The publication also of the laws of William the Conqueror, which, undoubtedly, was his own act, and which breathe much of the spirit of our Saxon institutions, should be taken as satisfactory proof of the disposition of the king to govern his new subjects according to their own laws.

* Legem 57 annis sopitam excitavit—excitatam reparavit—reparatam decoravit—decoratam confirmavit—et confirmata vocata est lex sancti regis Edwardi.—Wilk. Ll. Sax. 216.

Again, that this monarch did not seize the possessions of the great men of the nation, is abundantly proved by the fiscal compilation of Domesday book, in which the extent of property left in the possession of those who had enjoyed it in the time of King Edward the Confessor, (T. R. E.) cannot fail to attract the attention of the least observant reader. Both these documents, the laws of William the Conqueror and the Domesday book, will form fit subjects for more detailed investigation ;* being the sure land-marks, by which we may guide ourselves in this early part of our history.

Laws.

The laws of William the Conqueror begin with the provision which ran through all the Saxon edicts,—that all should swear allegiance to the king,—and direct that those who came with him into England, or have come since, should be in *his peace*,—and impose fines for the breach of this peace, in conformity with the same principles, and in the manner, of the Saxon laws. Also, that every French man who was in England, in the time of Edward the Confessor—partaking of the customs of England which they call *Lot and Scot*,—should pay according to the law of England ; and that all “*free men*” should have and hold all their lands and possessions, free from all unjust exaction, and all talliage ; so that nothing should be taken from them but their free service, which they ought of right to do to the king ; as it is ordained for them, and granted to them by hereditary right, for ever, by the *common council* of all the kingdom. And it is provided, that all *cities* and *boroughs*, and castles, and hundreds, and wapentakes, shall be *watched* every night, and should be kept in turn against evil doers and enemies, as the sheriffs, aldermen, reeves, bailiffs, and our ministers, shall the better provide by their *common council*, for the benefit of the kingdom. And that there should be throughout the kingdom, true *weights and measures*, as the king’s ancestors had ordained. And that all the freemen should be as *sworn brothers*, for the defence of the kingdom, the preservation of the peace, and the dignity of the Crown. The provisions for *selling* in the presence of witnesses, and with *pledges*, are repeated ; and

* See post.

Laws. that there shall be no market, or fair, unless in cities, in close boroughs, surrounded with walls, in castles, and in the safest places, where the customs, and the king's right may not be defrauded; and for this purpose *castles, and boroughs, and cities exist*, and were founded—that is to say, *for the safety of the people of the land, and the defence of the kingdom, and therefore they ought to be preserved in full integrity.*

Provisions for the ordeal and trial by battle are made, and the king expressly declares, that *all shall have and hold the laws of king Edward in all things.*—It is also provided, that every man who wishes himself to be accounted *free* shall be in *pledge*:—in the manner prescribed before by the Saxon laws:—and the hundreds and counties are to be liable as anciently. And it is prohibited for any person to sell his man out of the country, and if any one wishes to *make his bondman free*, the mode of doing it before the sheriff is minutely pointed out. In these laws, "*Scot and Lot*," terms so much used,—but we may venture to add, so little understood or considered in modern times,—are emphatically called the customs of England; and it is obvious that, as they result necessarily from the provisions of the Saxon laws, they must have been in practice as long as those laws were in existence:—for it was the very essence of them that every free man should contribute to the public charges, by paying with all the other freemen his scot; and, in the same manner, take his share with the other freemen in the public personal burdens, or lot:—by performing, in his turn, such military and civil duties as were uniformly imposed upon all:—as serving in the wars—keeping watch and ward—and filling in succession the public offices which were required for the State generally, or locally for the borough.*

It is a striking circumstance connected with these laws, that they describe the *freemen* who are to enjoy these privileges under them; and who are in return to give their pledges to the law; as "*sworn brothers*," (*conjurati fratres*) an expression, which, if not otherwise explained, might have been

* See Waggoner's case, 8 Co. 241, and 23 Hen. VIII. c. v. sec. 8.—The Lot of Jurors, 33 Hen. VIII. c. ix.—2 Luders, 98. 11 Geo. I. ch. xviii. sec. 9.—London.

supposed to have some connection with corporations; but which here is expressly referred to that union existing under the system of suretiship established by the Saxon laws. Laws.

The other collection of laws in the reign of William the Conqueror, expressly profess to be the same as those of king Edward, and they appear to contain the laws of Ina, Ethelred, and Canute. They make provision for the peace of the church, and of the king, and forfeitures for different offences—as well in the Sheriff's Court, as in the county,—they mention those who have soc—sac—toll—and infangthef.—The liability of the *pledges*, in case of the flight of the criminal, is enforced. We find the year and a day mentioned:—Provisions are also made respecting cattle, or any thing that is found.—The Ransom upon the death of a man is fixed:—and the different “Were Gilds,” established. A free man accused of theft, who had full testimony that he was “*law-worthy*,” might purge himself by his oath:—but a man who was before of *infamous report*, should purge himself by the oaths of twelve men.

The section respecting “*Rome Scot*” provides what a free-man shall give:—and for what the *Bordarii*, the *Scabini*, and the servants shall be quit:—and what also a *burgess* shall pay: which seems, indeed, the first place, where that term “*burgess*” occurs. The several reliefs which are to be paid are then ascertained. *Burgess*

In providing for the fine to be paid by the hundred upon any murder, it is directed that, if “the *men of the hundred*” do not apprehend the criminal they are to pay the fine.

We have before seen in the Saxon laws, that this mode of expression was frequently used:—for “the *men of the socs*,”—the “*men of the hundred*,”—and the “*men of the shire*,”—often occur in that period, as well as in this of William the Conqueror, and in all the succeeding reigns:—thus, in the time of Henry III., in the Great Charter, ch. 19; the constables of castles, and their bailiffs, are prohibited from taking corn or other goods of any one who is not of the town (*de villâ*) where his castle is situated.* It is impossible to

* And see Co. Litt. 234. 6, and Staund, fo. 152.

Laws. doubt in what sense the words "de villâ" are here used. In the charters to which reference will be made hereafter, we shall find it the common and general (as clearly it is the natural) description of the people of the place to which the charter is granted.

The object of the documents here collected is to show that, according to the clear and obvious meaning of the words, they are intended to describe the "inhabitants" of the place:—although, in modern times, they have strangely been supposed to apply to the selected bodies of corporators; for which no satisfactory authority can be produced.—And as there is the authority of statutes and charters for the other explanation, no question can arise of their being applicable, and intended, to describe the *free inhabitants* of the place:—which is the obvious interpretation of the expression, and consistent with the simplicity of these times, in which few words were employed, even in the more complicated affairs of life.

Section 29, is stated in the title to relate to the relief of servants. The word, in the body of the law is "*villain*," which seems to be introduced here for the first time. The law is itself peculiar, and provides that the lord shall have, for the relief of the *villain*, the best of his cattle, whether it is a horse, an ox, or a cow.

Now, as the general law was, that a villain could possess no property as distinct from his lord, it seems difficult to suppose how he could have the power of giving any thing to his superior. The latter part of the clause seems to remove this apparent difficulty. It provides that afterwards all the villains shall be in "frank-pledge." We have before seen many methods by which a bondman may procure his freedom, and it is obvious that all these laws were intended, rather to promote the acquisition of freedom than the continuance of villanage. We have also seen that, if the lord neglected to claim his villain, and permitted him to appear as if he were "free," the lord lost his right, and the villain acquired his freedom. It would seem, *à fortiori*, to be reasonable, that if the lord dealt with his villain as if he were free, that thereby he should emancipate him:—therefore, if the lord took from his villain a relief, by which he treated

the villain as if he were "free,"—recognising his power to acquire and possess property—it would seem to follow, that the villain should be considered free;—and consequently ought to be in frank-pledge; therefore the law says that, "after they have given their relief, all villains shall be in frank-pledge." Whereas, on the other hand, whilst they were the men—servants—or bondmen—of the lord, he was to be a pledge for them, and was to be responsible for their acts, and bound to produce them to do justice. All which obligations, by their becoming free, were transferred from the lord, and were thrown upon the Folc-mote, hundred, or leet. Thus, in this instance, establishing the law—like most of the Saxon code—upon the solid grounds of mutual benefit. As long as the obligation of lord and bondman continued, the lord, who had the advantage of the services was responsible for the servant, and the public, or Folc-mote, could not call upon him to bear Scot and Lot with them:—but as soon as the servant became free from the lord, the latter loses the services, and is discharged from the responsibility:—The servant acquires his freedom, and is responsible to the Folc-mote, who bind him by his pledges, and enforce upon him Scot and Lot.

William

The 33d section affords another striking instance of the manner in which William the Conqueror mitigated the severity of the Saxon laws with reference to the power and dominion of the lords over their tenants; and, like the preceding section, shews the spirit of freedom which was then recognized in our legal institutions. It provides, that no one ought to molest those who cultivated the land, except for the "cense" due from them; nor shall it be lawful for the lord to remove his cultivators from the land as long as they can do their proper service. The neifs or native villains—those who are villains by birth—are here, for the first time, mentioned; and it is provided, that those who depart from the land ought not to seek a false charter of nativity, that they might not do the proper service which belongs to their land.

If a native departs from the land where he was born, and comes to other land, no one shall retain him, nor his goods,

- Laws. but shall compel him to return to do the service which belongs to him; and if the lords will not make the villain of another return to his land, justice shall do it.
- Sec. 36. The 36th section provides, that if any one should die intestate, his children shall divide his inheritance between them.
- This we shall hereafter see was one of the most prominent rights which William I. by his charter recognised as belonging to the Burghwara or *inhabitants* of London, who, being designated by his charter, as “free” and “law worthy,” would be entitled to this privilege.
- Sec. 41. In the 41st section of these laws the loss of liberty appears to be first mentioned, and the expression is, that if any one shall make light of an injury, or shall give a false judgment, on account of hatred or avarice, he is to be fined for it; or, in the language of the original, he is to lose his franchise; which no doubt means, that he should lose his freedom or privilege which belongs to a frank or free man, and should not be, like the free citizens of London, law-worthy.
- Sec. 43. The provision which so often occurs in the Saxon Laws is repeated here, “that no one shall buy without the borough or vill, without witnesses.”
- Sec. 46. And also in the 46th section, the receiving of any person beyond three nights is prohibited, unless he is recommended to the host by a friend, *i. e.* unless he has through his friends such a knowledge of the person, that he would be responsible for him.
- Sec. 47. The 47th section provides, that no one shall allow his man, *i. e.* his villain, bondman, servant, or any one of his family, to leave him until he has purged himself from all accusations:—an important provision, as connected with these laws, to prevent the impunity of offenders, and to give full effect to the Law of Pledges, and to the responsibility of lords and hosts for their men and guests.
- Sec. 49. Section 49 provides, that every lord shall have his Pledge, who, if he is not purged from all offence, may produce him to do right in the hundred:—which is a further proof, confirmatory of what we have before said, that the lords were not exempt from the jurisdiction of the sheriff; but, as being

within the shire, were liable to the sheriff's tourn and hundred courts. Laws.

Lastly, the 50th section, provides for purgation by 12 men; and, if the lord does not produce the criminal, but allows him to escape, he is to compensate for it to the king, and is to be outlawed. So severe were all these provisions against any failure in doing justice. Sec. 50.

These laws, in a further chapter, proceed, with a most general equity, to provide for the peace, security, judgment, and justice of all English, Normans, French, and Britons of Wales and Cornwall, the Picts and Scots, and of all the king's subjects. Sec. 51.

They require the oath of allegiance to the king; inflict punishment for the death of any Norman or Frenchman; and direct that the Frenchmen, who were here in the time of King Edward, should be in *Scot and Lot*. That the freemen should hold their lands in peace, free from charges and talliages. They also provide for Watch and Ward in the cities, boroughs, castles, hundreds, and wapentakes; and repeat the greater part of the other regulations, to which we have before alluded, expressly providing for the continuance of the laws of King Edward, and directing the mode of making Bondmen free. Sec. 52 and 53.

The 66th section declares, as the law is stated in Glanville, *"that if any bondman shall have remained without claim for a year and a day in our cities, or in our boroughs surrounded with a wall, or in our castles, from that day they shall be made freemen, and they shall be for ever free from the yoke of servitude."* Sec. 54.

There is also another chapter of the Laws of William the Conqueror, in Saxon, as if it were intended for that portion of his subjects; and they direct proceedings against Theft, Homicide, and other charges between the English and French, which are to be decided by battle or ordeal, or the judgment of two men, and sometimes by oath; and the last section relates to Outlawry. Sec. 56.

William the Conqueror appears also in some degree to have altered the Ecclesiastical Law, or at least the admi-

Laws. nistration of it, by a short Charter referring to that matter alone, and which therefore does not apply to our present subject of inquiry.

After a careful investigation of these laws, it is impossible not to be confirmed in the opinion, that the Conqueror did not make, or at least did not persevere, in that extensive change in our Institutions which has been ascribed to him.

^{1070.}
^{4 Will. I.} Certain it is that he pledged himself by his oath not to do so : —for, after the insurrection in this year, which was headed by Frederick, Abbot of St. Alban's, William, by the advice of Lanfranc the Archbishop of Canterbury, renewed his coronation oath to the people, and promised to govern them according to their ancient laws and liberties, as they had enjoyed them under King Edward.*

DOMESDAY.

HAVING fully examined the Saxon Laws, as well as those of William the Conqueror, and shewn the progress of legal principles and practice down to the close of this reign, we now arrive at that period in which the great Fiscal Record of Domesday Book was collected by that king, and from which we may expect to find occasional information respecting our present researches.

Before however we proceed to its investigation, it may be desirable to refer to the opinion so generally entertained, that the Feudal System was introduced into this country by William the Conqueror.

We have already seen, in the Saxon Laws, that a considerable portion of the land in England was held under the lords by persons of a greater or less degree in bondage, owing services to them as well military, as agricultural, and civil; and from the general tenour of the laws it is obvious, that manumission from

* See Baron Maseres on the Ancient Constitutions of Parliament. 2 Arch. Brit. p. 302.

these services was an object of great desire to those dependents. The tenure therefore then existing in England may be assumed not to have been so light or easy as some have been disposed to imagine; but that it was accompanied with burdensome (and in some instances) servile and degrading occupations. Forfeitures—Escheats—Reliefs—Heriots—and Fines—all seem to have been due to the lords; and those more oppressive liabilities to wardship, and the conditions connected with marriage, seem also fully to have existed at that period. There appears therefore to be no solid reason for thinking that the material parts of the feudal tenure, even as exercised by the Normans, did not exist in England before their arrival—particularly when it is observed, (as we shall frequently have occasion hereafter to remark,) that a very considerable portion of the lands entered in Domesday are there stated to be held by the same Tenure—at the same Rent—and subject to the same Services, as they were in the time of Edward the Confessor.

The free spirit of our Saxon institutions, the manner in which they encouraged the manumission of bondmen, and the acquisition of freedom, might in some degree have abated the rigour, in this country, of the feudal system, which had been borrowed from the North of Europe, and which may have continued with undiminished, if not increased, tyranny amongst the Normans.—And thus they may, perhaps, have brought over to this country, some of the more severe provisions, and the heavier services of their law,—but for the reasons given before, they could not be numerous—nor could they now be defined or pointed out with any considerable accuracy—and any attempt at such an undertaking would be attributed rather to an adventurous spirit of conjecture, than of cautious research.

The Normans, in all probability, introduced some new provisions, and attempted more; as appears by the conclusion of the compilation of the laws of Edward the Confessor—and is in a great degree established by the fact, that those laws had for a length of time been neglected, and that it was a question between the Normans and the English,

whether they should be restored or not. But the fact of their having been restored is decisive to show, that no great change was ultimately allowed to prevail—but that in truth the general system of the laws continued much the same under the new dynasty of the Normans, as it had been under that of the Saxons, with the exception of a few usurpations, which might have been effected from time to time, by some few of the more powerful Norman Barons—or were introduced by the tyrannical and violent successors of William the first. It should, however, be remembered, that the temporary adoption of the Norman system, and the subsequent restoration of the Saxon, may account for those facts upon which the general hypothesis has been raised; and at the same time afford an easy solution of the question.

But be this as it may, it is clear that William, in order to ascertain and secure the revenue which arose from the great land proprietors, directed that great national record entitled, “Domesday,” to be made, which appears to have occupied about eight years in its compilation, and to have been completed about the 20th year of his reign, the king surviving not more than one year. It is impossible that so detailed and minute an account of the different possessions throughout the kingdom, should not convey to us some information of the state of the country at that period, and of the different classes of society.

1086.
20 Will. I.

At the same time, errors have been occasioned by seeking information from this record, which it is not calculated to afford.

It should always be remembered, that this work was compiled only for the purpose of affording a rent roll, as it were, of the tenure and value of the lands throughout the kingdom. Nevertheless, some information on the subject of our present inquiry, may be found in its precise details;—at least, many boroughs are mentioned, and, in some instances, the number of burgesses; from whence, occasionally, inferences may be drawn, as to the class of persons described under that term.

KENT.

DOVER,	MAIDSTONE,
CANTERBURY,	HYTHE,
ROCHESTER,	SESELTRE,
ROMNEY,	FORDWICH.

Kent, which produced to us the first specimen of our Saxon laws, is also the first county mentioned in the Domesday Book.

The boroughs, in confirmation of the observation we have before made, of their being distinct from the shire, and separate from the jurisdiction of the Sheriff, are usually placed in a distinct entry by themselves.

DOVER.

Thus Dover, the rent of which, in the time of King Edward, was divisible between the King, Earl Godwin, and the canons of St. Martin, has a long entry of the particulars of the lands held within it. And as to the *burgesses* it is said, amongst other things, that they provided 20 ships for the king, once each year, for 15 days; and in each ship were 21 men. They rendered this service, because the king had granted to them sac and soc. When the messengers of the king came to this port, they paid three-pence in winter, and two-pence in summer, for the transportation of a horse; but the *burgesses* found a pilot, and another assistant; and if more were required, they were furnished at the royal expense. Fol. 1.

From the festival of St. Michael to St. Andrew, the *king's peace* was established in the town. Whoever violated it, the *reeve of the king* received the common forfeiture.*

Every person *inhabiting* in the town continually, *manens in villâ assiduus*, rendered the royal customs, and was quit of toll throughout the realm of England.

All these customs existed when King William came to this country.

* In many parts of Domesday, words are interlined, which often are necessary to make out the sense, and, generally speaking, elucidate or explain the text. This is one instance, and many others will occur in the course of these extracts.—They were, probably, added from other copies of the book, or from the inquisitions which were returned, and from which the record itself is compiled.

Domesday.

Kent.

At his first arrival, this town was destroyed by fire; and therefore, its value could not be estimated, or its worth ascertained when the bishop of Baieux received it. At present it is valued at 40*l.*, yet the *Reeve* pays 54*l.*

In Dover there are 29 *mansions*, of which the king has lost the customary payments. Of these the owners are mentioned; and of three of them it is said, that there was in them a *guildhall of burgesses*. And as to 10 of them, it is added, that they all appeal to the bishop of Baieux, as their protector, deliverer, and donor. (*Protectorem, et liberatorem, et datorem.*)

One of the mansions is said to have been the property of an exile, or outlaw, (*utlage exulis.*) They agree that one half of it belongs to the king. And of another mansion it is said, that half was the forfeiture of the king.

Roger of Westerham erected a certain house upon the king's water, and has held to the present period, the customs of the king. Nor was there a house there in the time of king Edward.

In the entrance of the port of Dover, is a mill, which breaks almost all vessels by the great violence of the sea; and it does great damage to the king, and to the men, and was not there in the time of king Edward.

Of this the nephew of Herbert saith, that the Bishop of Baieux granted it to be made, to his uncle, Robert Fitzhivon.

From this entry we find, that the burgesses supplied, in the time of king Edward, 20 ships to the king, with 21 men in each ship; and also other considerable services. It is impossible such extensive supplies as these could be rendered but by the whole body of the *inhabitants*, who must be presumed to be the persons described; as those residing upon the spot, would obviously discharge such personal duties.

The burgesses also have *soc* and *sac*, which, as we have seen before in the Saxon laws, gave them a separate jurisdiction.

The king's peace is directed to be observed within the place, for a certain time, in direct conformity with the Saxon laws; and shewing a clear identity between the institutions

which prevailed, both in the Saxon and Norman times. The persons who were to bear the burdens of the place, by rendering the customs, and who were to enjoy the privileges of it, by being exempt from toll, must, necessarily, be the burgesses. And they are described to be all the persons inhabiting constantly within the town;* a definition which, if not recorded, would have been dictated to every person by the reason of the thing. And yet, two committees of the House of Commons, in 1826 and 1827, decided, upon the unsatisfactory ground of modern usage, against this express declaration, and the decision of the celebrated committee in 1623 (to which we shall have occasion to refer hereafter), and the obvious nature of these institutions, that there could be "non-resident burgesses of Dover;" and that they were entitled to the privileges of the place; one of them being that of voting for members of parliament. By the entry, all the above customs,—which would include the separate jurisdiction,—the liability of the inhabitants to pay the king's custom,—and the privilege of exemption from toll,—are stated to have existed in the Saxon times, and before King William came into England; which is important for the double purpose of establishing, that the *inhabitants*, from the earliest time, bore the burdens and enjoyed the privileges of the town; and also of establishing that no change was effected, with respect to these important privileges, by the coming of the Conqueror.

Domesday.
Kent.

The "Guildhall" of the burgesses is mentioned, which might have a tendency to mislead the reader from the associations in modern times connected with that term. But the burgesses must, necessarily, have a place to assemble, which would be called their hall; and there they would pay the customs which they owed the king: and, as "gildan" is the Saxon term for paying, and was applied at that time, as well to the boroughs as the counties, the whole of which being liable to the payment of the dues, was called the "gildable," there can be no doubt but the term "guild" was applied in that sense.

* See also post. the decision of the Committee—21 James I., 1623.

Domesday. Hence we find afterwards, that Wibertus held half a yoke
 Kent. of land, which was for the guild of Dover, *i. e.* which was
 Fol. 11. B. applicable for the payment of the guild or customs of that
 place.

It appears, the king had lost the custom of 29 mansions, from which, in conformity with the previous statement as to the rendering of custom, it must be assumed, that by some means or other, the persons who had those houses were not burgesses, or inhabitants continually residing within the town; because under such circumstances, they would have had to pay the custom.

It would now be difficult to show that each of these persons were not burgesses or inhabitants, but it is easy to explain why some of them did not pay custom: as for instance, the three of them which were converted into the Guildhall, being a place set apart for public purposes, and particularly for the payment of the custom of the king, no person would be liable to pay the charge for it. These three houses, therefore, are accounted for. So also the ten houses of which the Bishop of Baieux is stated to be the lord, would not pay custom, because, being in the hands of the church, they would not be liable to that burden, but would be taxed with the possessions of the church—thus 13 out of the 29 are actually accounted for:—and it is by no means impossible, that the others might also be held of some church, or might have been in the occupation of ecclesiastics, or persons dedicated to religion, who would not be burgesses, or liable to the custom. One of them is stated to be an outlaw, who, for the reasons we have mentioned before, would not be a burgess. The other inhabitants of these houses might have been the villains of Earl Godwin, who claiming them, they would be under his protection, he being responsible for them: and therefore they would not be sworn or enrolled in the borough, and would not be burgesses. Or they might be the men of the canons of Saint Martin, and as the men of ecclesiastics, would be exempted from the borough liabilities, and not be burgesses; for in the succeeding column of Domesday, respecting the

customs of Kent, it may be seen that the land of the Holy Trinity, of St. Augustine, and St. Martin, were exempted from reliefs to the king; and it is stated that the king hath nothing from them.

At the close of the entry of Dover follow the customs of Kent, which, however, are not material to our present subject, excepting that, as a further confirmation of the continuance of the Saxon institutions, we find frequent reference to the "Gribrige," or breach of the peace—to the Shire-mote—to those also who have their own soc and sac—to the men of different lords—to the reliefs—forfeitures—the king's half—the ransom of a robber—the receiving exiles without leave of the king—and other subjects connected with the Saxon laws.

Domesday.
Kent.

Fol. 1.

Before we finally quit the entry of Dover, we should observe, that although it was the head of the Cinque Ports, there is no reference in Domesday to that circumstance, nor to any connection with the other ports.

CANTERBURY.

The next entry material to our present investigation is that of Canterbury, where, amongst other things, it is said, that in the city King Edward had 51 *burgesses* paying rent, and 212 others over which he had sac and soc. Now the *burgesses* paying rent are 19.

Fol. 2.

Of the 32 others who had been, 11 were laid waste in the ditch of the city. The Archbishop has 7, and the Abbot of St. Austin's 14 for exchange of the *castle*; and there are still 212 *burgesses* over whom the king has sac and soc.

A monk of the church of Canterbury has seized two houses of two *burgesses*, one without, the other within the city. These were situated in the king's way.

The *burgesses* had 45 mansions without the city, from which they received rent and custom. But the king had sac and soc. The *burgesses* also had themselves 33 acres of land from the king for their *Guild*. These houses and this land Ralph de Columbels holds.

He has also, besides these, 80 acres of land, which the bur-

Domesday. geases held alodially from the king. He has five more acres which justly belong to the church alone. For all these this Ralph appeals to the Bishop of Baieux for protection.

Kent.

Ralph de Curbespine has four mansions in the city, which a concubine of Harold's held;—of these the sac and soc is the king's, but till now he had it not.

The same Ralph holds 11 other mansions of the Bishop of Baieux, in the very city.

Throughout the whole city of Canterbury the king had sac and soc, except the land of the church of the Holy Trinity and St. Austin, and others.

It is agreed concerning the highways that have entrance into the city and exit, that whoever incurs a forfeiture therein shall make ransom to the king. And so concerning the highways without the city, for one league three perches and three feet. If any one therefore in these public ways, within the city or without, shall dig a trench, or erect a paling, the *reeve of the king* shall follow him whithersoever he fleeth, and shall receive satisfaction for the king's use.

The Archbishop claims the forfeitures in the roads without the city on every side *within his own land*.

A certain *reeve* in the time of King Edward, by name Bruman, collected customs from foreign merchants in the land of the Holy Trinity and St. Austin, who afterwards, in the reign of King William, acknowledged before Lanfranc the Archbishop, and the Bishop of Baieux, that he had received the same unjustly, and swore on his oath that *these churches themselves had their customs free in the time of king Edward*.

And from this period both churches have received their own customs within their land, by the judgment of the barons of the king who held the plea.

Fol. 2, B. In the entry of the king's lands, it is stated, that "three hagæ in the city of Canterbury, belonged to the manor of Faversham."

Fol. 3. There is also at the head of the lands of the Archbishop of Canterbury, the following entry:—"In the city of Canterbury, the archbishop has 12 burgesses and 33 houses, which the clerks of the town hold for their guild."

Fifty-two houses in the city of Canterbury, are stated to ^{Domesday.} have belonged, in the time of King Edward, to the manor of Estursete, which the Archbishop held in his demesne of King ^{Kent.} Edward; but now they are not, except 25, because the others ^{Fol. 3, B.} are destroyed in the new palace of the Archbishop.

In the entry of the town of Saint Martin, which is stated ^{Fol. 4.} to belong to Estursete, it is said, that seven burgesses in Canterbury belonged to that land.

And amongst the lands of the monks of the Archbishop, in ^{Fol. 5.} the entry of Nordevde, it is stated, that 100 *burgesses*, less three, in the city of Canterbury belonged to that manor.

And amongst the lands of the bishop of Baieux, it is stated, ^{Fol. 8.} that 2 *manses of lands* in Canterbury belonged to the manor of Otringedene. And also a *house* in Canterbury, in the time of King Edward, belonged to the manor of Westselve. And the three *houses* in Canterbury, in the time of King Edward, belonged to the manor of Winchelsmere. And three *houses* ^{Fol. 9.} in Canterbury belonged to the manor of Wickham.

And that Adam Fitzhubert has of the bishop, in the hun- ^{Fol. 9, B.} dred and city of Canterbury, four houses; and two without the city. Haimo, the sheriff, held lands under the Bishop of Baieux, in Latintone, which the *burgesses* of Canterbury had held in the time of King Edward the Confessor, and till the Bishop had taken them away.

Thirteen mansions in Canterbury belonged to the manor of ^{Fol. 10.} Cilleham.

One mansion in Canterbury belongs to the manor of Ospringe.

One mansion to the manor of Ernoltun. And one mansion to the manor of Perie, and two hagæ to Trevelai.

And five hagæ to the manor of Dodeham. ^{Fol. 10, B.}

Amongst the lands of the church of Saint Augustine, the ^{Fol. 12.} abbot is stated to have *seventy burgesses*, belonging to the manor of Lanport.

Four hagæ in Canterbury belonged to the manor of ^{Fol. 14, B.} Newetune.

The many entries which follow of houses in the city belonging to other manors, sufficiently account, as we have

Domesday. suggested before, for many of the *householders* or *burgesses* not paying their house rent or gablum to the king. It establishes also to demonstration, that the *burgess-ship* *did not depend upon tenure*:—because if it did, they would have altogether belonged to those several manors, which it is clear they did not,—for they are called *burgesses of Canterbury*, and they could not be *burgesses of Canterbury* by virtue of tenure, because they did not hold of it;—but they were *burgesses of Canterbury* by virtue of their *resiancy*, and of their being *inhabitant householders there*.

Kent.

These passages therefore of Domesday, with the numerous others which pervade almost every page, are abundant to destroy the generally prevalent opinion that burgess-ship was connected with tenure.—And, on the contrary they establish the doctrine, that it was founded upon resiancy. Another current opinion is also equally negatived by these entries, viz. that *burgess-ship* depended upon tenure of the king, as tenants in ancient demesne or otherwise—because this entry of Canterbury shews, that, of the 231 burgesses 19 only held of the king. In the entry of the archbishop's lands, it is stated, that he had 12 burgesses in the city, seven of them (being part of the 32), belonged in the time of the Confessor to the king, and then paid rent to him. These had by some means been alienated by the crown, and had come into the possession of the archbishop;—but they were originally a lay fee;—and we shall have occasion to observe hereafter, that those lands only which originally belonged to the Church were exempt, but not subsequently acquired property; therefore, the seven houses which had been alienated by the king to the archbishop ceased, as is stated in the commencement of the entry, to pay rent or gable to the king;—but they were still subject to lay jurisdiction, and the sac and soc of the king: consequently those *householders* who resided in them, would be subject to do suit and service at the Court Leet in respect of this *resiancy*; and would thereby be made burgesses, although they were tenants of the archbishop holding a lay fee.

This important view of the subject is confirmed by the

distinction which arises from another part of this entry, Domesday.
 relative to the abbot of Saint Augustine: whose possessions, Kent.
 we may remember, are declared to be exempt from the soc
 and sac of the king. It appears that the abbot had taken
 14 *burgesses* (i. e. of course, their *houses*) in exchange for the
 site of the castle, which, as we have had occasion to observe
 before, would be separate and distinct from the city, and
 therefore would confer no burgess-ship. So also, the 14
 houses received by the abbot in exchange, not being merely
 a newly acquired possession, but a substitution for that
 which he had, would be taken subject to the same exemp-
 tions as the land which the abbot had given for it, and the
 king would hold the site of the castle which he had in
 exchange, subject to lay jurisdiction and lay liabilities;
 for otherwise the object of both parties in the exchange
 would not have been carried into effect.

The result of which is—the king would take the castle,
 to do with it as he liked; but, being separate from the city,
 no burgess-ship could be connected with it. The abbot
 would take the 14 houses as a substitution for that with
 which he had parted, and therefore subject to ecclesiastical
 jurisdiction, and entitled to ecclesiastical exemptions; and,
 consequently, the abbot does not appear, in the entry of his
 lands, to have any burgesses in the City of Canterbury,
 which he otherwise would, if the 14 houses had not been
 exempted.

The seven houses thus entered having afforded a clue to
 the understanding of this matter, it is no strained inference
 to assume, that the remaining five burgesses belonging to
 the archbishop stood in the same predicament; particularly
 as the 25 houses in the manor of Estursete, the remainder of
 the 52 houses there, held in demesne by the archbishop in
 the time of King Edward, do not appear to have any burgesses
 —otherwise the number of the archbishop's burgesses must
 have exceeded 12. We have, therefore, another evident
 distinction with respect to burgesses, between the posses-
 sions which were the archbishop's ancient demesne, and those
 which were of recent acquisition. The archbishop appears

Domesday. also to have 33 other houses in the city, with respect to which
 Kent. no burgesses are spoken of, and therefore some reason must be assigned why the inhabitants of those houses should not be burgesses. It seems apparent upon the face of the entry, —for they are described as clerks or ecclesiastics. They had, therefore, a clear ground of personal exemptions, again establishing the distinction between the laity and the ecclesiastics, to which we have had, and shall have, frequent occasion to refer. The clerks had their houses towards the payment for their guild, which they, as ecclesiastics, would render to the church.

On the other hand, the seven burgesses mentioned in the entry of the town of Saint Martin must have been lay persons, and not ecclesiastics, and therefore were, by their residence in Canterbury, bound to do their *suit royal* at the *Court Leet* of the borough, although they were new tenants of the Archbishop of Saint Martin, and as such bound to do their suit civil, or of tenure, at the Court Baron of the archbishop. The 97 burgesses of the manses of the Archbishop, who held of the manor of Nordevde, are subject to the same observation: but the manses of lands, and the houses in Canterbury held of the Bishop of Baieux, of the manors of Otringedene, Wickham, Cilleham, Westselve, Winchelsmere, Ospringe, Ernoltun, Perie, Trevelai, Dodeham, Lanport and Newetune, must have been held by persons exempt from burgess-ship, as ecclesiastics—females—minors—aliens—Jews—strangers—or the villains of some other lord, which observation will also apply to the four houses held by Adam de Fitzhubert. As to the two houses which he has without the city—they are to be referred, like those at the commencement of the entry, which were similarly situated, to the extension of the jurisdiction over the liberties in the suburbs. The lands which Odo, the Bishop of Baieux, had taken from the burgesses, was probably an old ecclesiastical fee which he had resumed.

Before concluding these remarks upon the entries respecting Canterbury, it may be requisite to observe, with reference to the guild, that in the reign of William II. there was a mer-

chant guild there, which gave up eight houses within Burgate to the convent of Saint Augustine, who transferred other houses in exchange for them :—but it will be seen hereafter that it was distinct from burgess-ship, as only a portion of the burgesses belonged to it; and it has been already shown, that the Guild of the Clerks of Canterbury was altogether separate from burgess-ship, as they were not burgesses.

Domesday.

Kent.

The extracts from Domesday, relative to Canterbury, supply a variety of information respecting the early condition of the place,—its burgesses,—and the several classes of society within it. The citizens are not mentioned. It is called a city.* And, as we have observed before, *all cities are boroughs*;—and, therefore, we find the *burgesses* of Canterbury, here spoken of as having existed in the time of Edward the Confessor. And as *burgesses* then paid *gablum* or house rent to King Edward, it is clear that they were *householders*. Which further appears, from the mention of the reduction of the number of those who paid rent to 19;—the remaining 32 houses, making together the 51 mentioned in the time of King Edward, having been destroyed,—a considerable portion of them being in the ditch of the city, which is said to have been 150 feet broad; † as shown by a record in the 18th of Edward I., in a suit between the archbishop and the city, who then claimed it, to be of that width. Fourteen others had been transferred to the abbot, in exchange for the site of the castle. Those, becoming ecclesiastical property, would be freed from the payment to the king. The 212 other persons, mentioned in the beginning of the entry, as those over whom the king had *soc* and *sac*, are, in a subsequent part, called burgesses. It is clear, that some part of the city was held of the king; and that over the rest of it, which was held of other persons, and from which, therefore, he was not entitled to house rent, or *gablum*, he had only *sac* and *soc*, *i. e.* jurisdiction as lord.

* A term borrowed, as it seems, by the Ecclesiastics from the Civil Law, and applied by them to those places where their great Ecclesiastical establishments were settled;—but the boroughs were so called, from the Saxons borrowing both their name and their jurisdiction, from the ancient common law.

† Somner's Hist. of Cant. 17.

Domesday.

Kent.

That the burgesses were householders, is also farther confirmed, by the mention of *two burgesses* in connection with *their houses* which had been seized by the monk. It is true, that one of these is stated to be without the city; and, generally speaking, the rights and privileges of a borough were confined to its limits:—so that this instance of a burgess's house being without the city would, at first sight, appear to militate against the doctrine, that all burgesses ought to be resident. But the jurisdiction and liberties of a borough were rarely confined within the ambit of its walls, the liberties extending far beyond, as is well known in the instance of the city of London, and will hereafter be established by many others. In this case it is perfectly clear, that the jurisdiction did extend beyond the walls; because it appears that the burgesses had 45 mansions, expressly described as without the city, from which they received rent, and which, therefore, were not in their possession, but over which, the king's borough jurisdiction, or his soc and sac, extended;—thus distinctly establishing, that the jurisdiction spread beyond the city.

The burgesses had also certain lands for or towards their guild, *i. e.* certain lands to enable them to make good their guild, or payments to the king.

Ralph de Columbel was the tenant, both of the houses and lands of the burgesses. He held some land of the church, and is stated to appeal to the Bishop of Baieux as his lord.

This might appear, at first view, in some degree to militate against the doctrine, with respect to burgesses, that has been before urged;—because if he were a householder within the borough, he would have been a burgess; which, on the other hand, he would not be, if he were a man of the bishop:—the whole would turn upon his residence.

If he rented land of the bishop, which it appears he did, and lived upon it, he was entitled to claim his protection. Now, although he held the houses and lands of the burgesses, there is nothing to shew that he resided upon them; and therefore, no inference can be drawn that he was bound to be a burgess, or that there was anything to pre-

vent him from placing himself under the protection of the bishop. In that point of view it is clear, that the burgess-ship did not depend upon tenure; for if so, Columbel must have been a burgess, because he held largely of the city: but it did depend upon "*residence*." And for the reasons before urged, it is fair to presume, that he resided upon the lands of the bishop, to whom he had attached himself as his lord.

The 11 mansions held of the bishop would, as ecclesiastical property, be exempt from the jurisdiction of the king; which is evident, both from the four mansions held by the concubine of Harold, being subject to the soc and sac of the king, and those of the Holy Trinity, St. Augustine, and the other churches, being exempt from it:—as well as that the archbishop had the forfeitures of the roads without the city, within his own land, although the king had the others, and the church of the Holy Trinity and St. Augustine were adjudged to be entitled to the custom of foreign merchants, payable in their own lands. The provisions respecting the highways—the forfeiture—and the king's peace, will recall the recollection of the reader to the Saxon Laws, as well as the mention of the *king's reeve*, who appears to have been the officer presiding over Canterbury from the earliest times. For in a charter dated at Canterbury, "Aldune" is mentioned as the "Prefect" (or "Reeve") of the city.* And in 956, to a deed of sale of a piece of land in Canterbury, "Bolthwig" subscribes himself amongst the witnesses as "Portgerefa:"—and the king's reeve is about the same time mentioned as one of the prisoners who were there taken.

ROCHESTER.

At the close of the entry of Canterbury, we find the city of Rochester mentioned. In the time of King Edward it was valued at 100*s.* when the bishop received it; now it is worth 20*l.*, nevertheless he who holds it renders 40*l.* We have also the following entries respecting Rochester.

Five *burgesses* in Rochester belonged to the archbishop's manor of Tarente.

* Somner's Hist. of Cant. 178.

Domesday. The Bishop of Rochester had and now has in Rochester
Kent. fourscore mansions, which belonged to Frandesberie and
 Fol. 5, B. Borestele, his own proper manors.

Fol. 7. And three houses in Rochester, of 3ld. which he took of
 the manor of Aiglessa into his own hands.

Also the bishop holds in his own hands, within the city of
 Rochester, four houses belonging to the manor of Ledesdune.

Also in demesne, one house in the city of Rochester, of
 the manor of Ofeham.

Fol. 8, B. Also nine houses in the city of Rochester, which belonged
 to the manor of Hov.

Also four houses in the city belonging to Otringeberge.

Fol. 9. And the bishop hath retained in his hands, three houses in
 the city of Rochester, which are entered as of the manor of
 Celca.

Rochester is in these entries called a *city*, upon which we have already observed with respect to Canterbury. It appears to have been held by the bishop;—but that it was a lay fee, acquired by him subsequent to the reign of King Edward. Five *burgesses* in the borough are stated to belong to the manor of Tarente. They must have been *householders*, having houses within the city of Rochester belonging to the archbishop's manor of Tarente, where they paid their rent. These burgesses are subjected to the same observations as those of the archbishop's in Canterbury. The many mansions in Rochester belonging to the manor of Frandesberie and Borestele, with respect to which no burgesses are mentioned—also the houses there, and those of the manor of Aiglessa;—the four belonging to Ledesdune, and the one belonging to Ofeham, where there is also no reference to burgesses—appear all to belong to manors in the actual possession of the bishop. Frandesberie and Borestele are expressly stated to be his own proper manors. Aiglessa and Ledesdune are described as being in his own hands, and Ofeham, as his demesne. They and their tenants would therefore be exempt from all borough duties and burgess-ship, as being the property and men of the bishop.

The three houses entered under the manor of Celca, are also expressly stated to be retained in the hands of the bishop. Domesday.
Kent.

The nine belonging to Hov, and the four to Otringe-berge, are not described as being the demesne, or in the actual possession of the bishop.—But the question is, whether, as that fact is so distinctly proved with respect to the others, the conclusion from it is not obvious, that these houses should be considered as being in the same situation, although not expressly stated:—remembering always that the great object of this return was to establish the profit and value of the property, which was invariably entered:—and not to define what were the liabilities, or exemptions from it, with respect to lay or ecclesiastical jurisdictions, and which, therefore, were frequently omitted.

Immediately succeeding the entry of Rochester are the possessions of Saint Martin, in which the Community of Saint Martin is repeatedly mentioned; and, perhaps, they might have been a corporation, *as such ecclesiastical bodies were incorporated from the earliest times.* In truth, they had nothing but their incorporation to unite them; for they were not bound to act together for the support, defence, or civil government of the place, as a general body of inhabitants were by the law compelled to do:—but they were a body united only by their incorporation.

SANDWICH.

The next entry material for observation is that of Sandwich, which is stated to lie in its own proper hundred, and that the archbishop held the *borough* for the clothing of the monks. And it renders the like service to the king as Dover.—This the men of the same borough testify; that, before King Edward gave it to the Holy Trinity, it rendered to the king £15—at the time of the death of King Edward it was not at farm, when the archbishop received it. In the time of King Edward there were there 307 mansions, and now there are 76 more; together 383. This was a large population for Sandwich at that period. We must observe of this place, as we have before

Fol. 3.

Domesday. of Dover, that it is not mentioned as a cinque port :—but it is stated that it renders the like services to the king as Dover, which was a large supply of ships and men. It is described as lying in its own proper hundred. And it will be seen hereafter, that it was a hundred of itself, and a hundred court was regularly held there, as shown by the custumal.

Kent.

It is singular that the *burgesses* of Sandwich are not described by that name. It is, however, clear that it was a borough, and must therefore have had burgesses ; and it is by no means unimportant to remark, that they are here called the *men of the borough*:—a term which we shall find constantly applied in the same manner, from the earliest charters to the Tudor dynasty. We must also note, that this was not an ancient ecclesiastical fee of the archbishop's, but belonged to King Edward, and was only received by the archbishop after that king's death.

It is a striking circumstance connected with Sandwich, that not only is the inference almost irresistible from these entries in Domesday, that the *inhabitant householders* were the *burgesses* in the time of William the Conqueror, but also in so distant a period as the reign of Charles II., when a new charter was granted to Sandwich, expressly incorporating the "*inhabitants*."

MAIDSTONE.

Fol. 3. Maidstone is mentioned as held of the archbishop. It is not described as a borough, but merely as a manor.

ROMNEY.

In a subsequent part of the entry of Kent, we find Romney described under the name of Romenel. The *burgesses* are spoken of as fourscore: five of them being stated to belong to the archbishop's manor of Aldinton.

In the entry of the manor of Lanport, which was held by Robert de Romenel, of the archbishop, there are said to belong to that manor 21 *burgesses* in Romenel, of whom the Fol. 4. B. archbishop hath the three forfeitures of theft—breach of the peace—and forestalling—but the king has all service from

them, and they themselves have all the customs, and the other forfeitures, for the service of the sea: and they are in the hands of the king—and in the time of King Edward, and since, it was worth 10*l.*, and now 16*l.*

Domesday.

Kent.

Again, under the Bishop of Baieux, lands in Lanport Hundred, in the entry of the lands which Robert de Romenel holds of the Bishop, it is said, the same Robert has 50 *burgesses* in the *Borough* of Romenel: and the king has all service of them: and they are quit by this service of the sea of all custom except three—theft—breach of the peace—and forestalling.

Such are the entries with respect to Romney. As to the 85 *burgesses* or *householders* in Romney, which belonged to the manor of Aldinton, it seems that they were not in the demesne, or the actual possession of the archbishop, because, in a subsequent entry of the manor, that part of it which is in Limes is expressly stated to be in his demesne. The negative inference therefore arises, that the others were not, which renders the entry of the *burgesses* consistent with the general law,—and this view of the subject is corroborated by the next entry respecting the 21 *burgesses* which belonged to the archbishop's manor of Lanport, for they are not in demesne, but held by Robert de Romenel.

And the *burgesses* only owed partial service to the archbishop, as far as forfeiture for theft, breach of the peace, and forestalling extended; but all other service belonged to the king, and all customs to themselves, in consequence of their service of the sea; which was no doubt the same as that of Dover and Sandwich, although it is not here mentioned, as in the case of Sandwich.

The subsequent entry is little more than a repetition of the former, excepting that it speaks of the 50 *burgesses* belonging to Robert de Romenel; which, added to the 85, and 21 entered before, make together 156.

In conclusion, we should observe with respect to Romney, that although its service at sea to the king is mentioned, it is not described as one of the cinque ports.

Domesday. Hythe is also mentioned in Domesday, and its burgesses ;
Kent. six of whom, described as in Hede, are stated to belong to the archbishop's manor of Leminges.

The manor itself is stated to be in demesne ; and the number of *villains* and *bordarii*, and their possessions. Then follows the church, which could not be in demesne ; but it is not so mentioned. After which, succeeds the entry as to the burgesses ; and they not being described as being in demesne, must, for the reasons we have given before, be assumed not to be so. This is the more probable, because immediately after follows an entry of some land of this manor, which was held by three men of the archbishop, not in demesne, but who were also stated to have held other lands and *millains* in demesne. Indeed, generally speaking, it may be observed, that where *villains are mentioned, it is usually with respect to lands held in demesne*. Two hundred and twenty-five *burgesses* in the borough of Hythe, expressly described as being within the borough, are stated to belong to the manor of Salteode (Saltwood), which was held by Hugh de Montfort, of the archbishop ; and is the parish in which Hythe is situated.

These altogether make 231 burgesses ; and as they are all described emphatically, as being within the borough, it raises a strong inference that *none but burgesses were inhabitants* ;—a conclusion which is confirmed by the subsequent charters granted to this place, particularly that of Hen. IV.,—the bye laws,—the admission of barons,—and the records which speak of them as “ *dwelling within the town, household-ers, resiants, and in-dwellers.* ” The charter of the 17th of Queen Elizabeth, expressly speaks of the barons and *inhabitants* having enjoyed privileges from time immemorial, and incorporates them ; subsequently to which, persons are disfranchised and dismissed from offices, because they had *departed from the town, and removed their dwellings from the town elsewhere, living out of the liberty for more than a year and a day* :—those only who paid *scot and lot* being unquestionably the persons to be admitted, as was expressly stated at an assembly in 1707, the 5th of Queen Anne.

And yet in 1710, upon the question being brought before a committee of the House of Commons, whether the mayor, jurats, common council, and free men (which in fact included non-residents as well as residents), had the right of election; or, whether it was in such of them only who inhabited in the port, and paid *scot and lot*;—the committee, on very loose evidence, purely negative, and only spoken to for a few years, decided,—that it was in the mayor, jurats, common council, and freemen, (and the House adopted that decision.) Thus letting in the ^{new} residents, who ever afterwards in fact controlled the election.

It seems that it was in respect of the manor of Salteode, which belonged to the archbishop, that he appointed the *bailiff* of this borough, until 1539,—31 Hen. VIII., when the archbishop exchanging the manor and the bailiwick of Hythe with the king for estates elsewhere, the archbishop ceased to appoint.

Lord Coke states,* that Hythe was made one of the cinque ports by William the Conqueror. But this may be reasonably questioned, as in this record, which was made at the close of his reign, it is not mentioned as one of the cinque ports, nor is there, as in the cases of Sandwich, Dover, and Romney, any mention of its service at sea to the king. Neither does it appear as connected with the cinque ports, until 1400,—2 Hen. IV.

SESELTRE.

In the return of Kent, in the Lest of Borowart, there is an entry sufficiently peculiar to require observation. It is stated, that there is in that lest a small *borough* called Seseltre, or Seasaltre, which properly belongs to the kitchen of the archbishop, and a man of the name of Blize holds it of the monks.

In all periods of our history, it appears that there have been some places which have been boroughs, and which have subsequently ceased to be so. Throughout Domesday, and particularly in the county of Kent, and the succeeding

* Inst. iv. 222.

Domesday.

Kent.

Fol. 5.

Domesday. county of Sussex, many of the hundreds have the addition of
 Kent. boroughs, and probably were originally of that description, but at the time of the survey did not exist as such; and the converse also frequently occurs, as many boroughs were created subsequent to the survey. When we consider the varying fluctuations of population, this is not to be wondered at—and as the accumulation of inhabitants in a particular spot was the real cause of the establishment of a borough—so, when on any account population took another course, it was but reasonable that the borough should cease to have its separate and distinct jurisdiction; and that other places, where population had increased, should acquire these necessary and peculiar privileges, and have separate establishments; and such has always been the practice of our constitution.

No burgesses of this place are spoken of:—and, therefore, it may be assumed that there were none: which inference is confirmed by the *Bordarii* being mentioned. The causes which led to the borough being reduced, it is now probably difficult to trace; but at all events there is this peculiarity connected with this place, that it belonged to the personal services of the archbishop, and it was held of the monks—and the land appears to have been in demesne. All of which are sufficient reasons for losing its population and civil lay importance.

Besides which, it is by no means impossible that there may not be a precise meaning in the peculiar phrase, “*proprie pertinet*,”—it might have assumed to be a borough, without any legal authority—and this expression may be intended to convey the idea that, although such had been the case, it was, in fact, the proper ecclesiastical possession of the archbishop.

FORDWICH.

Fol. 12. There is also another small borough mentioned, which may perhaps, in a great degree, come under the same observations, as it is stated that the abbot holds it. It is called “Forewic,” and the entry is, that King Edward had given two parts of the borough to Saint Augustine; but the one-third part, which

belonged to Godwin, the Bishop of Baieux granted to the same saint,—King William agreeing to it. There were 100 manses of lands, four less, rendering 13 shillings: now there are 73 manses only remaining. In the time of King Edward and since, it was worth 100 shillings: now 11 pounds and two shillings. Twenty-four acres of land Saint Augustine always had. There, then, were, and are, six burgesses, rendering 22 shillings. In that borough Lanfranc, the archbishop, holds seven manses of land, which, in the time of King Edward, served Saint Augustine: now the archbishop has taken away that service to him.

This borough appears to have been dismantled, by being divided, and held in three different parcels; the whole at last being held by the abbot, though a part of it had before been held by Earl Godwin; which seems to explain the difference between this borough, and the one to which we last referred. For in that case, the whole was said to have properly belonged to the archbishop; and no burgesses are mentioned: here, a part had belonged to Earl Godwin, as a lay fee; and if there were any inhabitants upon it, they would have been burgesses, who would continue such, notwithstanding the property came into the ecclesiastical hands. And, therefore, we find that there were, and are, six burgesses.

It is true, that the entry is, that Saint Augustine always had the 23 acres where the six burgesses were. But if this is a part of the borough, it is inconsistent with the former statement; because from that it appears, that Saint Augustine had neither of the three parts of the borough till the time of King Edward and King William. And if it were not a part of the borough, it is difficult to see how they could be burgesses. It seems, therefore, difficult to explain this passage, in which there must be some mistake or inaccuracy.

Domesday.
Kent.

Domesday.

Sussex.

SUSSEX.

CHICHESTER,	HASTINGS,
NEW BOROUGH,	STEYNING,
LEWES,	ARUNDEL,
PEVENSEY.	

Fol. 16. Although there were nine Parliamentary boroughs in Sussex, besides the cinque ports of Hastings—Winchelsea—Rye—and Seaford, it is worthy of observation, that not one of them is separately entered in this survey.—In the first and second columns, however, there are considerable blanks, in which it is probable that one or more were intended to have been entered; but which of them it is now impossible to determine. Chichester—Lewes—Hastings—Steyning—Arundel—are all mentioned; but not Shoreham—Horsham—Bramber—Midhurst—Grinstead—nor any other of the cinque ports—unless the ‘new borough’ introduced in the 17th, or the 20 burghesses entered in the 18th fol., but not described as belonging to any particular borough, can be referred to either of those places. Besides these, 110 burghesses in Pevensey occur.

Fol. 28. The castle only of Bramber is described as being situated in one of the hides of the manor of Wasingetune, which paid for 59 hides in the time of King Edward, but now does not give Geld—probably on account of the castle being within it.

CHICHESTER.

Fol. 16. Chichester is the borough first mentioned amongst the demesnes of the king—and under the manor of Boreham, it is stated, that 11 hagæ in Chichester belonged, in the time of King Edward, to that manor: but that the bishop now hath 10 of them from the king, and one of them only is in the

Fol. 17, B. manor. As belonging to Falcheham, part of the possessions of the land of the Abbey of Saint Edward, are entered six bur-

Fol. 23. gesses in Chichester. In the city of Chichester, in the time, of King Edward, there were 100 hagæ, two and a-half less, and three crofts. Now the city itself is in the hands of Earl

Roger, and there are in the same manses 60 houses more than there were before. And under the same Earl Roger are held 66 hagæ in Chichester, in 18 different manors.

Domesday.
Sussex.
Fol. 23, 24,
and 25 B.

And in the manor of Helnache are entered three burgesses in Chichester. There are, therefore, only nine burgesses altogether of this city incidentally mentioned. Ninety-nine hagæ occur:—but notwithstanding they are spoken of as places where men resided or remained, (manent) yet it seems very questionable, whether they were such houses as paid Scot and Lot, and made the occupiers liable to bear the burdens, and entitled to share the benefits of burgess-ship. If so, the discrepancy between the number of hagæ and the burgesses is easily accounted for—but it seems difficult to explain what half a haga could be;—and in a subsequent part of the entry it is clear, that both hagæ and manses, (masuræ) are distinguished from houses.—For they are all three mentioned in the same entry, and it is said, that, in the same manses there are 60 houses more than there were before.

Fol. 23.

In these entries as to Chichester, there is less to connect the burgesses with their houses than in those of the other places which we have before investigated:—and in the reign of King Stephen there is a confirmation to the burgesses of Chichester of their guild merchant, with all their ancient customs. Notwithstanding the negative inference arising from this want of connection between the burgesses and their houses,—and the affirmative proof, which in the estimation of some persons would arise from the existence of so ancient a guild merchant,—yet the burgesses were, in 1660, most clearly defined to be the *inhabitants*:—the contest then being, whether the *free citizens* alone, or the commonalty at large, ought, as burgesses, to elect the representatives in Parliament, and it was decided in favour of the latter. It appearing, upon view of the books of the city, that for 21 parliaments, the *commonalty*, as well as the *citizens*, had a voice in the election, and therefore the committee so determined; and the House ordered the mayor into the custody of the serjeant-at-arms, because he had disregarded several ancient pre-

Domesday. cedents that had been offered unto him, to establish the right
Sussex. of the commonalty, and had refused to admit the voices of the commonalty;—which was described by the Speaker “as a wilful contempt of the authority of the House, and in breach of his trust.” And in 1710, there was a petition of the candidates, freeholders, inhabitants and temporary freemen, to establish this right, but it was unsuccessful; and the burgesses voting for members of Parliament have been long considered to be, the inhabitant householders, paying scot and lot.

As members had been returned to Parliament for this place from the 23d year of Edw. I., and nothing has ever occurred either before or subsequent to the period, to alter the class of persons who were the burgesses, it is obvious they must always have been those we have described.

LEWES.

The next Borough we find mentioned in Domesday is Lewes; and although the entries respecting it do not convey much information upon the subject of our inquiry, the short history of this place will be important, as explanatory of the simple nature of the original borough rights under the common law, before they were complicated by usurped usages, or by the perversion of the charters of the crown.

Fol. 16, B. But to proceed with our extracts from the survey.—The archbishop had in Lewes 21 hægæ belonging to the manor of Melinges—the bishop of Chichester three—and there are besides these 100 others, altogether 124.

We have before observed as to Chichester, the half of a haga returned—there is here an instance of the entry of the third part, and another of three parts of a haga; the former in the manor of Wintreburne, the latter in Wicha.

It appears also from these entries, that a haga was not merely land inclosed; because, in the manor of Pinhedene, two hægæ and a meadow of land are mentioned. In Westmestun one haga is stated to render nothing.

Fol. 26. The *borough of Lewes* is entered under the possessions of William de Warene;—its gable rent and toll are

stated. King Edward is described as having had there, *in demesne* (in dominio) 127 burgesses; and their custom was, that if the king wished to send his own men, there was collected of all the men, of whomsoever the lord might be, 20s., which those had who kept arms in the ships. Provisions follow as to the payments to be made to the reeve, upon the purchase and sale of cattle in the borough. And as to the ameracements and payments for manslaughter—adultery—rape—flight—and coining;—of all these, two parts belonged to the king, and the third to the earl.

Besides the burgesses of the king, three are stated to belong to the bishop's manor of Hafelde; ten to the manor of Suesse, part of the possessions of Saint Peter of Winchester; seven to Alsistone, of the church of Battel, the manor of Childetune; 26 of the manor of Newode; and six in demesne, belonging to his manor of Dicelinges;—which last entry is connected also with one of 11 manses in Lewes; from which it would seem, as we have shewn before, that every manse might not produce a burgess; because they might either be the men of some other lord,—or villains—or ecclesiastics, &c. &c.

The number of burgesses in the time of King Edward, appears to have been 127: at the period of the survey, only 53. It is clear, that those who were there in the reign of King Edward, were householders, as they paid gable rent.

Observations have already been made, with respect to the burgesses belonging to different manors. But the striking feature of this place, appears in its subsequent history:—no charter is found to have been granted to it;—nor was any mayor ever created. And although the reeve is mentioned, his office was either simply as the bailiff of William de Warene's manor; and therefore not the officer of the king;—or the office was subsequently discontinued: for it seems that the constables, the common law officers, who ought to be appointed at the Court Leet, alone preside in the place.

The only usurpation which appears to have occurred at Lewes is, that ~~there~~, by confounding the Court Leet and the Court Baron together (an abuse very frequent), the constables

Domesday. have been elected at the latter, instead of the former. **With**
Sussex. this exception, Lewes appears to have continued in its original state : and it is a singular eulogy upon the simplicity of our early institutions, that Lewes has produced scarcely any disputes or litigation ; and the name of this town is almost unknown to our early legal records.

With the same certainty as to its parliamentary privileges, although it had returned members from the 23rd of Edward I., no question had arisen as to the right of election there, till 1628 ; when the return being disputed, it was argued to be in the *inhabitants*. And a further parliamentary inquiry arising in the year 1736, the right was determined to be in the *inhabitant householders, paying scot and lot*.

Glanville. Although, therefore, these entries in Domesday, like those of Chichester, afford us little information upon the subject, yet the simple unperverted history of this place establishes to demonstration the doctrine adopted by the celebrated Committee in the reign of James the first, that *of common right—all Inhabitants—Householders—Resiants within the Borough*, have the right of Election as Burgesses.

Yet Brady, who wrote in 1690, and who either did, or ought, to have known of the agreement as to the right of Election, which had been entered upon the Journals of the House of Commons in 1628, quotes in his Book, written for the purpose of establishing the exclusive right in those whom he called the *Community or Select Body of the Corporation*, the passage which we have above extracted with respect to Lewes, and draws from the expression (in dominio) the inference, that the Burgesses of Lewes were in immediate subjection to King Edward :—or in other terms, were his vassals. A construction which the word will in no degree admit—but on the contrary, it merely implies, that they held directly of the king in capite, and not of any intermediate lord—and as they held by Burgage or Free Tenure, they were *not vassals*, but *free men* ; and residing there, were the free men, resiant inhabitants—householders—sworn—enrolled—and paying scot and lot, and as such, “ Burgesses.”

Domesday.

Sussex.

HASTINGS.

The entry as to Hastings is very short, and merely shows that four burgesses held of the abbey of Feschamp, as part of the manor of Ramelic. We shall therefore postpone this case until the reign of William III., when an important question arose as to its parliamentary rights; and, in 1736, an inquiry into the municipal privileges was instituted, upon a mandamus at the suggestion of Mr. Henry Moore, who claimed admission as a freeman.

1698.

1736.

STEYNING.

The entry with respect to Steyning is also brief and unsatisfactory. It is stated that the abbot holds it:—but in the commencement of the entry there is no mention of the Borough or Burgesses. After specifying the possessions of the manor, it is added, in the Borough there were 118 manses, now there are 123.

Fol. 17.

In the time of King Edward they worked at the lord's hall (*curiam*) as villains.

From the latter part of this passage it would appear, that those who lived in Steyning in the time of King Edward were not *freemen*, but *villains*: and therefore would not be *burgesses*. Whether those who inhabited the manses continued to do that service, and therefore were not entered as burgesses, it is difficult now to say:—but Steyning will hereafter afford us sufficient matter for observation, when the extraordinary and varying decisions of the House of Commons, as to the parliamentary right of election in 1701, 1710, 1715, 1791 and 1792, come under our consideration. In the first two of which the right was determined in the *Inhabitants paying Scot and Lot*:—the two succeeding in the Burgage holders:—the latter being a decision under the jurisdiction created by the "Grenville Act:" and upon an appeal by the same authority in that year, the right was finally established in the *Inhabitant Householders paying Scot and Lot*:—which therefore ought, like Lewes, to be taken as the original general definition of a Burgess of

1701, 1710,
1715,
1791, 1792.

1792.

Domesday. Steyning—with the addition of the qualifications required
Sussex. by law, *i. e.* being of free condition, and therefore sworn and enrolled.

ARUNDEL.

Fol. 23. The entry as to Arundel, is somewhat more particular than the last; but still affords little material information.

The *castle* only seems to have existed in the time of King Edward; and it rendered for a mill, three entertainments; and also for a pasture: altogether four pounds. At the time of the survey, with the *borough* and the port, and the custom from the ships, it rendered 10*l.*, and was worth 13*l.*

It appears therefore to have increased in value; which probably arose from its having been in the mean time created a borough. Robert Fitz Tetbald is stated to have his own toll of foreign men. Moren is stated to have the custom of two burgesses—Ernald one—St. Martin one. These are all the burgesses who are mentioned; and they probably occupied the houses which they had under the persons specified. From the other parts of the entry it appears, that a *burgess* and an *haga* paid the same sum—*viz.* 12*d.* each.

With respect to this place, also, the parliamentary right of election has been twice decided, to be in the *inhabitants*
 1623. *paying scot and lot*:—once, in 1623, by the celebrated committee
 1693. in the reign of James I.; and again, in 1693, in the reign of William III.

PEVENSEY.

In the survey of Sussex another borough is mentioned, which does not now exist as a parliamentary borough, excepting as part of the cinque port of Hastings.

There were 24 burgesses stated to be in the demesne of King Edward:—as they rendered gable, it is clear that they were householders.

The Bishop of Chichester and the priests—Edmer, Ormer, and Odo, the Earl of Moriton—and others—are all stated to have had different numbers of burgesses; amounting in
 Fol. 20, B. the whole to 158.

As this borough does not afterwards form any particular ^{Domesday.} feature in our inquiries, we shall abstain from further obser- ^{Sussex.} vations respecting it.

SURREY.

GUILDFORD.

In the survey for Surrey, although there were six parliamentary boroughs, we have no material mention of any but Guildford.

At the commencement of the survey, under the Terra Regis, we have a long entry of Guildford—but it is not Fol. 30. named as a borough; nor is there any mention of its burghesses—but the persons inhabiting and dwelling in the houses and hægæ, are simply described by the general appellation of “homines.” King William is stated to have there 75 hægæ, in which dwelt 175 “men:”—from which it is clear that more than one man could live upon an hægæ; and, consequently, not synonymous with domus, or any other name denoting individual residence. This is confirmed by the next material point of the entry, from which it appears that Ranulphus, the clerk, had three hægæ, where there lived six men, and whereof the same Ranulph had soc and sac, except the common geld to be laid upon the vill—from which none could escape; and to which Guildford, not being a borough, but a part of the county, was liable.

The entry proceeds. If a *man of his* should be guilty of any crime in the town, and not being in “pledge” should escape, the “reeve of the king” hath nothing from thence. But if one shall have been charged there, and shall be in pledge, then the king has his ransom. Ranulph, the sheriff, holds one hægæ, which he hath hitherto holden of the Bishop of Baieux. But “the men” testify that it doth not adjoin to any manor; but he who held it in the time of King Edward granted it to Tavi, reeve of the town, for the ransom of one of his forfeitures.

Domesday. There is another house which the reeve of the Bishop of Surrey. Baieux holds of the manor of Bronlei—of this, the “*men of the county*” say, that he hath not there any other right, except that the *reeve of the town* received a certain widow, whose house it was; therefore the bishop appointed the same house to his manor, and hitherto the king had the customs of it; but the bishop now hath them. Also, “*the men who have been sworn*” say of another house, which lieth in Bronlei, that the *reeve of the same town* was the friend of the same man who had this house, and on his death, converted the same to his manor of Walerann.

In this entry we have a direct reference to the jurisdiction of *sac and soc*, mentioned in the Saxon laws, which the intermediate lord had over the inhabitants; also to the *common geld*, to which persons here entered as the “*men of the land*,” and not as burgesses, in the county at large were liable; and likewise to the system of “*pledge*,” to which we have made such frequent reference in our observations upon the Saxon institutions.

The town appears at this time to have been under the government of the *king's own reeve*. The remaining part of the entry is a minute detail of matters, upon which we have before commented. But the history of this place is peculiar. It seems to have been reduced to a state of indigence, in the time of Henry II., as in the 19th year of his reign, the aid of the town remained unpaid upon account of its poverty.

1172.

1256.

In the 41st Hen. III., a charter was given to the “*good men*” of Guildford, and their “*heirs*,”* granting, that they and their goods, wherever found, should not be arrested for any debt, for which they were not pledges, or principal debtors; unless the debtor should be of their *commonalty* and *town*: they having from whence they could satisfy their own debts, in whole, or in part, and the said men should not do justice to the said creditors.

From this grant to the *men* and their *heirs*, it is obvious, as is so well explained by Madox in his *Firma Burgi*, that they

* Mag. Rot. 19th Hen. II. Rot. 12, B., Surrey.

were not then incorporated. And, although the charter is to ^{Domesday.} them in perpetuity, yet, from the numerous authorities ^{Surrey.} quoted by Madox, it is clear, that such grants were made, to aggregate bodies, as well of counties, hundreds, forests, &c., and to the clergy and laity,—where there was no pretence for assuming that the grantees could be, or were, incorporated.

The object of the grant was to secure the “men” of Guildford from liability to any debts but their own, and those of others for whom they had become pledge, according to the Saxon system:—and who as inhabitant householders within their borough, must have had property in it, by which they could be summoned and made responsible, and for whose forthcoming to do right, pledges had been given in the Court Leet.

The liability of the “men of Guildford” therefore, by this charter, is confined only to the debts of those who are in their *commonalty*, *i. e.* who are not a part of the *commonalty of the county*, but enrolled in their commonalty, at their borough Court Leet; and being within their jurisdiction, by having within the borough their houses and goods, from which their debts could be satisfied; so that they would not be liable for any person who, although he had been of their commonalty by residence, had ceased to be so, by removing his house and goods from that place to another; under the general law, a fresh local responsibility would be cast upon him, ~~upon~~ his giving fresh pledges in the place of his new adoption. Such a person would be divested of his responsibility, and of all his rights and privileges, in the borough he left, and would enjoy them in the place to which he had removed his residence.

Thus, by the ordinary course of the general law, being subject to all responsibilities, and entitled to all privileges, were necessarily and indispensably connected with actual local residence; and, therefore, we shall find hereafter, with respect to this place, that all the rights were actually restrained to the residents.

Another charter was also granted in this year to the “good ^{1256.} men” and “heirs;” which shews, that up to this time;

Domesday. Guildford was not a borough, but part of the county of Surrey: for it was directed by the charter, that the County Court of Surrey should for ever be held in this town.

However, Guildford must shortly afterwards have become a borough; as in that capacity, it returned members to parliament, in the 26th of Edward I.

1297.

1354.

In the 28th of Edward III., it appears from the pleas before the Barons of the Exchequer,* that the sub-collectors of the tenth and quindeme, were charged with partiality, and with having imposed the taxes unequally upon the people of Guildford: it being alleged, that those charges ought to be assessed proportionably upon all the men of the place.

In confirmation of the observation we have before made, we find, that in the 39th of Henry VI., the persons who as burgesses made the election for Guildford, were described as "*the men of Guildford, commorant and resident there.*" The records relative to this borough, afford but little information as to the state of its burgesses, till a more advanced period of our history.

1689.

In 1689, a report was made respecting the election for this place, from which it appears, that the question in dispute was, whether the right of election was only in the freemen and freeholders paying scot and lot resident; or generally in them, whether they paid scot and lot or not.

In the course of the inquiry it appeared in evidence, that an order used to be read in the church for all *free men* to come to the election. This, according to our early institutions, was perfectly correct; for we have shewn that the *Free Men* only were entitled to this, as well as the other privileges of the place; villains—females—ecclesiastics—and other ^{before} enumerated persons, were not entitled to enjoy this or the other rights of the town. It should also be observed, that the notice was for *all free men* to come—who the free men were we shall show hereafter—having previously established the fact by the return in the time of Henry VI., that they ought to be commorant and resiant,

* Rot. 94, B.

à. e. in other words, they ought to be the persons who owed Domesday.
 suit and service at the Court Leet, and ought to be enrolled Surrey.
 and sworn there.

The Committee resolved, "that the right was only in the freemen and freeholders of the town paying scot and lot, "resiant in the same:"—a decision in the main correct, and consistent with the general law as to the freemen and their resiancy—and with the law of William the Conqueror as to the paying scot and lot. But there is one immaterial error in introducing the freeholders into the resolution; because, as we have shown before by repeated instances, the possession of a freehold was not necessary, to make a person a freeman. It was sufficient if he were free upon any account. It is true, that the possession of a freehold was clear and incontestable proof that he was free, and that he was therefore included under the more general term of Free man, but it was upon that account unnecessary to mention the freeholders; and it might lead to error, because it might induce a notion that the possession of a freehold had a more intimate connection than it really has, with the rights of burghership. The only distinction as to freeholders is, that the evidence of their freedom was more direct than that of others, of which there seems to be some trace in this borough; as upon a subsequent occasion it was stated, that although freemen must be enrolled, (by which the other freemen would be aware of the fact of their admission,) yet it was not necessary for freeholders; who are stated to be entitled to vote without previous enrolment; which, perhaps, was the reason of their being mentioned in the resolution; for actual resiancy, and paying scot and lot being required, the resolution would not extend the right to any non-resident freeholders. Since the reign of Charles II. all villainage having ceased, the distinction as to freemen, according to the clearest principles, ceased with it: and as resiancy, and paying scot and lot, were requisite qualifications, the parties must necessarily be householders, and therefore the distinction of freeholder was immaterial, to bring a person within the real definition of a voter, according

Domesday. to the present principles of our constitution, namely, of an
Surrey. *inhabitant householder paying scot and lot.*

In considering the above decision, we should also recollect, that in fact the committee had no question submitted to them, whether the free men and freeholders were or were not entitled to vote:—but that being assumed, the question was,—whether it was also requisite they should pay scot and lot, and it was properly decided they ought to do so.

1710. In 1710, the contending parties agreed that the right of election was as stated above; and they further agreed, that one who had served seven years as an apprentice to a free man was, *ipso facto*, a free man. This was certainly clear by the general principles of the law of villainage, for a villain could enter into no contract with his lord. If, therefore, a person was bound an apprentice to another, it was decisive he was not the villain of that person; and if he served seven years with him, it was equally clear that he was the villain of nobody—because, even if he had a lord, he must have lived away from him more than a year and a day, which, we have already seen would, by the laws of William the Conqueror,* make him free, therefore a person so serving would, in the language of this agreed right, be *ipso facto* free; not by virtue of any peculiar corporate right, but under the general common law:—it being requisite for the jury at the Court Leet under the common law, to present such a person as a free man, bound to be sworn and to give his pledges; an instance of which we shall have occasion to mention hereafter in the borough of Stockbridge, where, although that place never was incorporated, the jury presented persons as being free by service of apprenticeship, and the leets made similar presentments in the boroughs of Yarmouth and Lynn. In the course of the inquiry, where the above rights as to Guildford were adopted by agreement, another fact occurs in evidence, which may serve to illustrate a material part of our investigation. It was stated, that two persons were not rated in the parish of Trinity in Guildford, where they resided, because that parish would not receive them as inha-

* Vid. ante, p. 67, & post. Glanville.

bitants, but they were rated where they came from. Hence ^{Domesday.} the connection of burgess-ship with the general questions as ^{Surrey.} to inhabitancy, upon which also the whole system of the Poor Laws depended. Another point as to the power of adoption or rejection by the people of the place to which a "*Stranger*" comes, occurs, and requires explanation.

This power has been mistakingly thought to be the peculiar characteristic of a corporation, which, in the modern case of the King and Bird,* are said to have the power of selecting their own members: and this discretion has erroneously been thought to be unrestrained and arbitrary. These propositions, when applied to municipal corporations, appear too absurd to be really a part of the English law; and too artificial for the periods in which they are supposed to have originated. A much more reasonable—practical—and simple view of the subject obviously presents itself. If an individual leaving his former residence, should come to another place where he is a stranger, the inhabitants there, if he became a permanent resident, would be liable for his acts, and also for his support if he should be reduced to poverty,—they would have therefore a clear, natural right to inquire whether he is a person of such character and conduct, or of such means, that they could safely incur that responsibility: and they were bound by the law to inquire, also, whether he was at that time under any charge, or whether he was a fugitive; for if he were, they were bound not to receive him: and if they did, would have been liable to amercement. A discretion of this kind, therefore, was not founded upon any corporate rule or doctrine—but by the common law necessarily cast upon the inhabitants; and it was to be exercised by the king's officers, with the assistance of the jury at the court leet—not deciding by any whim or caprice, or according to any arbitrary power they had; but deciding according to the fact of good or bad fame—sufficient or insufficient means—guilt or innocence; and this is the real ground of that discretion and power, of adoption or rejection, which has been so much abused by the corporations for a length of

* 13 East, 385.

Domesday. time—and has led to those evils that have cried aloud for
Surrey. correction :—and which was also the real foundation of the acceptance or rejection of parishioners, upon notice being given of their coming to live in a place, according to the old law ; and the system of certificates which was superinduced upon it.

Thus it was that the parishes were referred to in the case we are investigating, and the fact to which we have adverted was introduced into the evidence : namely, that these parties were not rated, because the men of the town would not receive them as inhabitants in the parish to which they had come—but they were rated in the parish they had left. In the subsequent part of the evidence it is plain that the power of rejecting whom they thought fit, was insisted upon by the magistrates at Guildford ; for it is stated, that such as had no right by birth or service, could not be made free but by the magistrates—which was perfectly correct, if their discretion was exercised on the grounds, and in the manner, to which we have referred ; but if regulated by whim—caprice—or arbitrary selection—was altogether illegal and unjustifiable.

The right of freedom by birth was also adverted to ; and had the distinction between villains and free men continued down to these times, there is no doubt but that such a right would have existed under the law ; because we have seen from the Saxon laws, and shall have occasion hereafter frequently to advert to this doctrine again, that freedom and villainage were denoted by birth—and that a man was one or the other according as his parents were “ free ” or “ bond. ” But the absurdity of continuing such a shadow of right, after the substance itself was wasted away, is too great to require any further comment. This obvious inconvenience would result from it—that where the nature and substance of the thing is forgotten, it is immediately open to abuse and perversion. Thus we find in Guildford, and many other places, that although the right of freedom by birth must, from its very nature, extend equally to all the children—giving to the males direct freedom for themselves, and to the females

derivative freedom for their husbands—yet, by a strange ^{Domesday.} perversion, it has been limited only to the eldest son; by ^{Surrey.} superinducing upon the general doctrine as to freedom and villainage, the rules of primogeniture, which apply altogether to other matters; but which the corporations and the courts of law have most strangely ingrafted upon the doctrine of villainage, from unsatisfactory evidence of varying and anomalous usages.

Another subject is referred to in this case which will also require an observation. It is said that a fine was to be paid by those not entitled by birth or service. This also had a legal and reasonable origin: although in subsequent times, it has been made the means of most unjust extortion, and undue influence. The reasonable commencement of these fines was—that every borough separated from the county, was obliged to provide for its own expenses of every kind; for which purpose they had a common stock, and oftentimes possessions to replenish it:—of which we have seen instances before in Canterbury and Rochester. If a stranger came to a town, it was unreasonable that he should, by means of this common stock, be relieved from the burdens which would attach to his person or property, unless he should contribute to it according to the amount of the fund—the necessities of the place—and his own means; and therefore the amount of his fine or contribution was a matter of arrangement between him, and the governors of the borough, aided by the jury, who in many instances assessed it. Thus may be reconciled to law and reason, if the original nature of these institutions is considered, that the system, as at present practised, is irrational—oppressive—and productive of much evil, both direct and indirect. It is clearly illegal—because it has been expressly decided that to sell the freedom, is contrary to law, and ought to be suppressed.*

No disqualification for voting is more general—has been more universally adopted—or is more clearly founded on principle—than that persons receiving alms are not entitled to vote. And yet to show the illegality and anomalous

* Rex v. Breton, 4 Bur. 2287.

Fines

Domesday. nature of the usages resorted to in different places, it appears
Surrey. that, in one of the cases respecting the election for Guildford, it was given in evidence, that all freemen were allowed to vote, whether they received alms or not.

1713. In 1713 the same right of election was again acquiesced in by all the parties interested: but an additional matter was also agreed upon, namely, that the freemen having no right to freedom by birth, or, by service, must be admitted by the consent of the majority of the mayor, magistrates, and approved men—which, subject to the observations we have before made, and taken with reference to the Common Law, that is, treating the mayor and stewards at the Court Leet, and the approved men, as the suitors there acting by their jury, is most correct—but taken with reference to the arbitrary consent of a modern corporation, or any persons connected with them, is altogether incorrect.

Before closing these remarks, it should be observed, that in one of the cases in Parliament it was stated in evidence, that the “approved men” meant those who had been bailiffs. An application of the term so absurd as not to require refutation, when it was obvious from the history of this place, that “*the approved men*” were those who having been received into the borough, had been sworn, enrolled, and admitted as the permanent responsible inhabitants of the place.

Thus we have of Guildford one uniform history from the earliest period down to the present time, that with reference to its municipal government, and also that important right of returning members to Parliament, the persons who bore the burdens, and shared the privileges of the place, rejecting now the unnecessary distinctions of free men and freeholders,—were, according to that which is called by the learned Committee in the reign of James the first, “*The Common Right*”—“The Inhabitant Householdiers, commonorant and resiant, paying Scot and Lot.”

HAMPSHIRE.

WINCHESTER,
CHRISTCHURCH,

STOCKBRIDGE,
SOUTHAMPTON.

In the survey of Hampshire we have very little information with respect to the Boroughs. In that county there were nine Parliamentary Boroughs, besides three in the Isle of Wight. Of all these there is only a reference to four: "Winchester"—"Christchurch" (by the name of Thvinam)—"Stockbridge" (by the name of Sumburn)—and "Southampton:" of the remaining eight no information is recorded material for our present purpose.

WINCHESTER.

Many hægæ in Winchester are mentioned as belonging to different boroughs—also some houses—and 14 burgesses in Fol. 43, B. Winchester are stated as belonging to Romesey—and 31 Fol. 44. manses in the city as belonging to the abess of Watwel; of which she hath all customs except the geld of the king. But it is added, that from that geld the house of the abess is free. Nor is there any material information respecting the city, borough, or burgesses of Winchester in the Liber Winton. The Borough and shire are spoken of, and 86 burgesses are referred to as sworn to make the survey.

CHRISTCHURCH.

Thvinam is described in the survey as a Borough, under Fol. 38, B. the lands of the king; and that there are 31 manses there, rendering gable in the time of King Edward.

STOCKBRIDGE.

Stockbridge (under the name of Sumburn) is mentioned Fol. 47. amongst the possessions of William de Otre, who held it of

Domesday. the king:—its lands—villains—bordarii and servi are enumerated; and nine *mansions of burgesses*. But no further reference is made to them.

Hamp-
shire.

SOUTHAMPTON.

Fol. 52. Southampton is called a Borough, the king having in demesne there fourscore men wanting four: they appear to have been there in the time of King Edward. From the same entry it seems there were 65 Frenchmen inhabiting there. A long list of persons follows who have the custom of their own houses in Southampton by the grant of King William.

Of these four boroughs the entries communicate so little information, that we shall postpone a more ample investigation of them until we arrive at the periods where they may respectively be of importance.

BERKSHIRE.

WALLINGFORD,

~~WINDSOR,~~

READING.

In the county of Berkshire there are four Parliamentary Boroughs:—^{two} ~~three~~ of them are mentioned as boroughs in the survey—Wallingford, ~~Windsor~~ and Reading.

Abingdon does not occur; for being ecclesiastical property, it was in the hands of the church, and did not become a borough until the reign of Queen Mary: when a charter was granted on the same day to that borough and also to Banbury. Both charters were substantially the same; but

1660. they had a very different fate—for in 1660, upon a question whether the word “Burgesses” in the charter to Abingdon extended to the “Inhabitants”—the Committee decided that

1689. they did. In 1689, it was assumed by all parties that the

1708. right was in the scot and lot men. In 1708, there was a resolution, that it was in the inhabitants paying scot and lot, and it was afterwards so continued.

On the contrary, Dr. Brady, being interested in the bo-
 rough of Banbury, in the year 1690 published his book on Domesday.
Berkshire.
1690.
Boroughs, for the purpose of disproving the right of election
 in the inhabitants at large, and establishing it in the select
 bodies of corporations. In his treatise he has mis-stated
 and mis-quoted both these charters—and asserting that
 they were similar, omits all mention of the prior decisions
 with respect to Abingdon, whose case was before parlia-
 ment in 1689, the year before he published his book. 1689.
 The effect of which was, that, in 1691, the year after the pub-
 lication, upon the question being—Whether the right of 1691.
 election in Banbury was in the mayor, alderman, and capital
 burgesses, or in the burgesses at large,—the committee
 emphatically determined that the right was in the mayor,
 aldermen, and capital burgesses *only*. The history of these
 two places, so peculiar in this respect, will require further
 consideration hereafter.

We proceed now to the survey, in the commencement of Fol. 56.
 which we find Wallingford entered separately from the county,
 and before the lands of the king.

WALLINGFORD.

In the borough of Wallingford, King Edward had 276 hagæ,
 rendering 11l. of gable; and they who *dwelt* there did the Fol. 56, B.
 service of the king, with horses or by water, as far as Blid-
 beria, Reddinges, Sudtone, Besentone, and to this the reeve
 gave them either their diet or wages, not from the cense of
 the king, but from his own. Now there are in the same
 borough all the customs as were before.

But of the hagæ there are 13 less—eight are destroyed for
 the castle,* and the moneyer hath one quit so long as he
 makes money. Several owners of the hagæ are there enu-
 merated.† One which the king gave him, as he says—

* At that time the seat of Wigod, Lord of Wallingford. 1 Bro. Will. 57.

† Miles Crispin married Maud, daughter of Robert de Oily, 1084, with whom
 he had the castle—town—and whole manor of Wallingford. His widow married a
 second time Brian Fitz Count, who strongly defended the castle against King Ste-
 phen. Fitz Breant and his wife entering into a religious life, Henry II. seized the
 manor of Wallingford.

Domesday. another which he calls the king to warrant—one of Henry, Berkshire. by the inheritance of Soarding, but the burgesses testify that he never had it. Of 13 of them the king hath not the custom; and as yet William de Warren hath one haga of which the king hath not the custom. Moreover, there are 22 manses besides, of Trenchinen King Edward had 15 acres, in which his domestic servants (huscarles) *dwelt*. And 45 other manses are mentioned, as being in the several manors of Neneham—Haselie—Estoche—Belgrave—Suttone—and Braio. Six hagæ are mentioned of Henry de Ferrariis, which, in the time of King Edward, and also in the time of King William, gave 62*d.* customarily to the *king's farm*; now give nothing. Some of the owners of the hagæ are described as having the *gable* of their houses; and if blood be spilt there, if the man be received before he be challenged by the reeve of the king,* (except the Sabbath, on account of the market, because then the king hath the forfeiture of adultery and theft,) they have the amends in their houses—but other forfeitures are of the king.

Fifteen thanes in Oxfordshire are stated to have had 22 houses in Wallingford.

When geld was given in the time of King Edward, the hide gave, in common by all Berkshire, 3½*d.* before the birth of the Lord, and as much at Pentecost.† If the king would send his army to any place, for five hides a soldier should go:—for his victual and pay, from every hide should be given him 4*s.* for two months. But these monies should not be sent to the king; but be given to the soldiers. If any on being summoned on an expedition went not, all his land was forfeited to the king:‡ but if any one remaining should promise to send another for him, and, nevertheless, he who was sent should remain, his land should be quit for 50*s.* The king's demesne thane or soldier dying, all his arms should be sent to the king for relief, and a horse with a saddle, and another without a saddle; but if he had dogs and hawks, they should be presented to the king, if he willed to receive them. If any are killed, a man having the king's

* Sax. Ll.

† Sax. Ll.

‡ Sax. Ll.

peace, both his body and all his substance (i. e. the murderer's) should be forfeited to the king.* Whoever broke out of the city by night, should make 100s. amends to the king—not to the sheriff. And he who being warned did not come to the stable of hunting, should make 30s. amends to the king.

Domesday.
Berkshire.
Fol. 57, 58,
59, 60, and
61.

Fifty-two other hagæ in Wallingford are stated to belong to the several manors of Bastedene—Sudtone—Stivetune—Harvelle—Bristowelle—Hildeslei—Sotwelle. And the church of Battel held Bristoldestone—Witeham—Mortune—Ciltone.

In this entry we perceive that Wallingford was a borough in the time of King Edward, as the reeve is mentioned: the number of the hagæ are 276—eight of which had been destroyed for the castle, and four others in some manner not explained: one was held free of charge by the moneyer. Those which were taken for the castle would become under the jurisdiction of the warden of the castle, and therefore would be distinct from the borough, as we have had occasion to observe before, and shall afterwards cite instances to confirm; and as it appears that the houses of the borough were removed for the castle after the time of King Edward, it seems clear that the borough existed before the castle, and consequently that the former could not be named from the latter, as Dr. Brady and others have suggested.

As the burgesses are stated to testify one of the facts referred to, it seems the return was made by them, and not by the Hundredors, as was usual in other parts of the survey. From this circumstance, as well as from the existence of a reeve, we may reasonably infer, that Wallingford had at that time a separate jurisdiction, and was free from the interference of the king's officers. We should also observe, that the services were to be done by those who *resided* in the borough (*qui ibi manebant*); and that, therefore, none could be entitled to the privileges of the place, but those who lived there. On the other hand, the huscarles of the king who resided in Wallingford, would not contribute to the services mentioned before; and, therefore, would not be entitled to

* Sax. Ll.

Domesday. the privileges of the place: establishing, that on special
Berkshire. grounds of fact, (not caprice or arbitrary selection,) persons residing in the place, could be exempted from its burdens, and excluded from its privileges. The *farm* payable to the king, which seems to have been the fixed payment, exempting burgesses from the interference of the sheriffs, and the other officers of the crown, who collected the royal revenues, is twice mentioned. Twenty-two manses are stated to belong to Frenchmen. It does not appear whether they were in the country before the arrival of William the Conqueror. If they were, and were in scot and lot, we have already seen, from the laws of that King,* that they were to continue to enjoy them. On the contrary, if they were not, it would seem that they would not be entitled to the privileges, and of course would not be burgesses—but would be treated as foreigners.

An expression occurs in this entry, which may perhaps explain what we have seen so frequently stated, that burgesses' houses—manses—and *hagæ*—are said to belong to different manors remote from the borough. This probably arose from the rent of their houses belonging to the lords of those respective manors; and, therefore, we find 27 *hagæ* returned here as “valued” in another manor.

The owners of some of the houses, returned *gablum*, or house-rent: the tenants of the other houses, which belonged to the king, paid to him their house-rent, as is to be seen at the commencement of these extracts. The latter, however, is remitted by the charter of Henry II. The forfeitures to be paid to the king, and those to the borough, are clearly specified—shewing, that as to the greater offences, the king's officers retained their power; but in the lesser, the borough had their own exclusive jurisdiction.

Some of the remaining entries refer to the Saxon laws, in such a manner as will satisfy the reader that they continued in use during this reign.

The enumeration of the possessions and privileges of Wal-

* Wilkin's Ll. Angl. Sax. p. 228.

lingford, concludes with stating what Wallingford paid when Domesday.
 the whole county was taxed ; and nothing can more distinctly Berkshire.
 show that the borough was exempted from the jurisdiction
 of the sheriff than this passage, in which both its tax and
 its services are stated as distinct from those of the county :—
 and the forfeiture to be paid for breaking out of the city in
 the night, is expressly stated to be payable to the king, and
 not to the sheriff. All these circumstances render this place
 a striking early instance of what a borough anciently was in
 England.

Dr. Brady expressly says, “ that there is no mention of
 burgesses in the survey ”—but so manifest an error, the
 above extracts will establish.

We now pass on from these entries, to the general history
 of Wallingford, which, as it will afford us a very early instance
 of a guild, will be also decisive to show, from its subsequent
 details, that that fact did not in any degree interfere with its
 character as a borough.

This place appears to have been of great importance from
 the earliest periods of our history ; and to have had a castle
 in the time of the Saxons,* from whom it was taken by 1006.
 the Danes—who placed a garrison within it. And Sweyn
 also took Wallingford, and treated it as a place of principal
 defence.†

When William the Conqueror, after the defeat of Harold,‡ 1013.
 marched to take possession of London, he crossed the
 Thames at this place, which by the historians is called Oppi-
 dum Guarengefort. And it appears he afterwards gave this
 castle to a nobleman called Brientius,|| whom he made
 Marquis of Wallingford ; who restored the castle, and per-
 haps increased its site—as it appears from the entry we
 have before quoted from Domesday, that some houses were
 destroyed to make way for it.

We find a charter also granted to Wallingford as early
 as the reign of Henry II. which is contained by inspeximus Hen. II.
 and confirmation in a charter of 51 Henry III., 1266.§ 1266.
51 Hen. III.

* Lamb. 1006. † Lamb. 1013. ‡ Gista Gul. p. 142. || Lamb. 1015.
 § Tur. Lond. Mem. 10, No. 4. Bib. Cot. And see 2 Hearne, Lib. Nig. p. 816.

Domesday. The charter of Henry II. directs, that the men of Walling-
Berkshire. ford should have a *firm** peace through all this land of Eng-
 land and Normandy, wheresoever they may be. And he
 granted to them for ever, all their laws and customs as they
 had them in the time of King Edward, and his ancestor King
 William, and his son William the second, and in the time of
 King Henry his ancestor:—that is, that they should have
 freely a merchant guild—and that no reeve of the king,
 nor any of the justices, should intromit concerning it,
 except their aldermen and minister. And if the king's
 minister, or any justice, should charge them in any plea
 or account, or should wish to call them in question,
 the king prohibited them, and directed that they should
 not answer in any manner except in their own proper
 “*Port-mote.*” And, if the reeve should implead them
 without charge, they should not answer; and if any of them
 should be amerced by the judgment of the burgesses in
 any forfeiture or judgments of right, he shall pay it before
 the *reeve*; and the king prohibited that there should be any
 market in Craumersa, or any merchant, unless there be a
 merchant guild. And if any one should depart from the
 Borough of Wallingford, and should gain his livelihood
 from the market of Wallingford, the king ordered that he
 should do according to the law of the merchant guild to the
 burgesses, wheresoever he should be, within the borough or
 without. And the king granted for ever to all the men of
 Wallingford, full acquittance of all his gable which they
 used to render for the Borough of Wallingford. And
 all their laws, liberties, customs, and acquittances for ever,
 and all others which they can show their ancestors freely
 had, as the citizens of Winchester ever better had; and
 this for the great service and labour which they sustained
 for him in the acquisition of his hereditary right in
 England. And, that wheresoever they went in their mer-
 chandises throughout the whole land of England—Nor-
 mandy—Acquitaine—and Anjou, by water or by land, they
 should be free of toll and passage, and all customs and

* Li. Sax.

exactions, so that they should not be molested on this Domesday.
 account by any one, under the forfeiture of 10*l.* And Berkshire.
 the king prohibited and directed under the same forfeiture, that the reeve should not make *scottale* in Wallingford, nor demand geresumam from any person:—and that he should not establish any custom in Wallingford which should injure the burgesses of the town against his gift and grant.

This charter grants to the burgesses of Wallingford a merchant guild, with all customs which belong to such a body—and it speaks of the right judgment of the burgesses, and also of the fine to be paid to the reeve. It seems therefore clear, that the merchant guild was even at this time, as we shall find it in many other places in subsequent periods of our history, under the jurisdiction of the head officer, and burgesses of the place:—but it was a grant for the purposes of trade; separate and distinct from that exclusive jurisdiction which existed in every borough under the Common Law—and by which they were admitted—sworn—and enrolled as burgesses—the one being merely connected with commerce, the other, a part of the government, and police of the country.

Disputes are directed by the charter to be settled in the *port-mote*, which is the court established under the Common Law: and the provision with respect to the merchant guild requires, that if any one living by it should go out of the borough, he should do right according to the law of the merchant guild, to the burgesses, whether he be within the borough or without. Hence it is evident, that a *member of the merchant guild might reside without the borough: which we have proved a burgess could not*; nor could such a non-resident be liable to the services, which were to be executed by those only, who were resident within the place: and therefore this charter goes directly to establish,—that the members of the guild, and the burgesses, were different bodies—that the two institutions were of essentially different characters—and that much of the difficulty and uncertainty of this subject has originated from confounding

Domesday. these two subjects together; which was more especially Berkshire. effected by Dr. Brady, who in the commencement of his

P. 9. work states emphatically, that "not one word of the burghesses" of Wallingford is mentioned in Domesday:—this we have shown to be unfounded.

P. 144. In a subsequent part of his work, he quotes the returns of Wallingford, (upon which we shall observe hereafter;) and in the appendix he cites this charter for the purpose of showing, that the granting of a merchant guild was the substantial creation of the borough, and formed its essential character. Whereas the borough existed before; and the two things are distinct, as appears by the charter—and will be established by the subsequent history of this place. Besides, this obvious consideration would occur even to a superficial inquirer, that if a guild were the foundation of a borough, every borough must have had a guild—which is undoubtedly not the fact; and, therefore, to enumerate many places in which there were guilds, really amounts to nothing, unless it can be shown that every borough had one. On the other hand, if there is any place having a guild merchant which is not, and never has been a borough, it will decisively negative that the guild was the foundation of that privilege. However we shall proceed to inquire what were the consequences in a place, where undoubtedly a guild existed.

In the Testa de Nevill there is an inquisition of the lands and tenements of the Borough of Wallingford, and what services the kings of England were used to have from thence. After which there follows an enumeration of the burgages, (which probably were the *hagæ* in Domesday,) with their *gables*, and other burgages are mentioned, which owed no service to the king.

1227. In the 11th Henry III. a writ issued to the sheriff to restore to the men of Wallingford their town,* which had been seized into the hands of the king because, they were not upon the view of the sheriff. The probable explanation of which proceeding is, that, as it appears in the Testa de Nevill, that the

* Mad. Ex. 244.

services of the king had been withdrawn, which were the ^{Domesday.} considerations for the privileges of the borough, the sheriff ^{Berkshire.} had treated the men of the place as if they had not been burgesses: and therefore had seized the town, because they did not attend his view—but it being found, upon inquiry, that it was a borough, and that the services and rents were due from it—the king orders the town to be restored to the burgesses. From which it will be seen, that the whole depends upon the borough being exempted from the jurisdiction of the sheriff, in consequence of the services rendered by the burgesses—and has nothing whatever to do with the subsequent grant of the guild by Henry II.

Having thus considered the early documents with respect to Wallingford, it remains now to inquire, who have exercised the privileges of the place under the name of burgesses.

In the 21st of Edward I. the burgesses of Wallingford ^{1293.} first returned members to Parliament; and in the 35th year ^{21 Edw. I.} of the same king, the mayor and other burgesses of the ^{1307.} borough are fined for an arrear of their firm, and upon their ^{35 Edw. I.} paying the fine, the borough is restored to them.*

The burgesses of Wallingford continued to return members to Parliament,† and in the 11th of Henry IV. 1410, the mayor ^{1410.} and all the comburgesses of the town, upon scrutiny, ^{11 Hen. IV.} elected the burgesses. This return is signed by 12 persons, who, in all probability, were the 12 men of the jury acting for that year.

From this return, however, Dr. Brady draws the inference,‡ “that all the burgesses mentioned in it were the 12 who signed it:”—as if from the earliest periods of parliamentary returns by indenture, down to the present time, any individual had ever imagined that they were signed by all who concurred in the election; without which fact (that never existed) Dr. Brady’s assumption is totally unsupported. And the return itself seems to raise a strong *prima facie* inference against his observation, because all the burgesses are stated to have elected *scrutinio veritatis*,—ex-

* Trin. Com. Mem. Rot. 65. a. 2d Mad. Ex. 247.

† Mad. Fir. Bur. 139.

‡ Brady, 146.

an

Domesday. pressions which would hardly have been applied to ~~one~~
Berkshire. election by 13 persons; and yet Brady proceeds to say,
 "that no man can think but that these 12, with the mayor,
 "were the community;" undoubtedly a bold surmise, where
 so many houses and burgesses had been mentioned, and
 such important duties to be discharged by them. And in
 the Testa de Nevill many more than that number of burgesses
 are mentioned—in truth all the documents relative to the
 borough would lead to a contrary conclusion. Nor is
 Dr. Brady's assertion with respect to the community, or the
 governing part of the town, any thing more than his mere
gratis dictum, disproved by the records. And even were the
 12 the governing part of the borough (as gratuitously assumed)
 it would prove nothing for his argument, because the election
 was not by the governing part of the borough, but by all the
 burgesses.

1418. Again, in the 5th year of Henry V., the mayor and others,
 with *the consent and assent of all the burgesses*, elected their
 members—from which emphatic words it would seem difficult
 to draw the inference, that the burgesses at large did not
 vote, but that the election was by the aldermen, or chief
 burgesses, of whom no mention has been made before, nei-
 ther does the return in any manner refer to them; but yet
 Dr. Brady, with equal hardihood of gratuitous assumption,
 asserts, that those who signed the return were aldermen or
 chief burgesses, and not burgesses of the lower rank.

1465. In the 7th of Edward IV., the return for Wallingford is
 made by the bailiffs, who, with the *unanimous assent and
 consent of the comburgesses*, elected, and the common seal is
 affixed to the return:—which we shall hereafter find, from
 many instances, was no uncommon assumption by the offi-
 cers of any place, though not incorporated.

It is useless to accumulate observations upon the genera-
 lity of the words of this return, which is similar to the former,
 but Dr. Brady triumphantly asks, "Who could have the
 "disposal, ordering and directing of the common seal of any
 "borough?" to which the obvious answer is, "the *inha-
 bitants*;" or, if the more rigid rules of the modern corpora-

tion doctrine are referred to, it is clear that the use of the ^{Domesday.} common seal, even of a corporation, must be regulated by ^{Berkshire.} the votes of the majority of the corporation at large.

In the 1st year of the reign of Queen Mary, a return for Wallingford is made by the mayor and *commonalty*, which, as Dr. Brady relies with so much confidence upon his community, it is somewhat singular he did not mention. However, it makes no essential difference in the case; for we shall show hereafter, by abundant proof, that "*commonalty*" was the most general term applied to all aggregate bodies of every description; and here undoubtedly described the aggregate body of *all the burgesses* mentioned in the former returns. 1553.

We have at this time a clear legal recognition of the separate jurisdiction of Wallingford, and of its being distinct from the county; for we find in the same year,* the report of a case in which a juror was challenged because he had nothing, and did not *dwell* within the hundred of Morden, from whence the panel was. To which it was replied, that he *dwelt* in the vill of Wallingford, which was within the hundred. But it was rejoined, that the vill of Wallingford, from time immemorial, was a franchise, and wholly exempt from the hundred; and that the *inhabitants* of the vill, and the *inhabitants* within the hundred, never united themselves, or met in any court, or were sworn upon any jury together. Upon this the plaintiff demurred, and the challenge was disallowed, and the juror sworn, and the opinion of Bromley, chief justice, was, "because it was confessed that he was once within the hundred, and yet had been exempted since time of memory, it should be shown how, and by what means, and wherefore." Upon which technical ground alone this challenge was disallowed; and even in that view the judgment is not very intelligible, because it is expressly alleged, that it was immemorially exempt from the hundred, and the documents we have produced prove it to have been so. We find no other trace of any municipal acts done by the inhabitants

* 1 Dyer, 100 a.

Domesday. of Wallingford, or of their rights or privileges being brought
Berkshire. under the judgment of the courts; but they have regularly continued to return members to Parliament down to the present time, and decisions upon their right of election have occurred in two or three instances.

1663.
 15 Car. II. ^{Charles II.} This King granted a charter to the Borough of Wallingford, reciting that it was an ancient town, having, from time immemorial, for the government thereof, a mayor and alderman, two bailiffs, one coroner, two constables, and other public officers, of the burgesses and *inhabitants* of the borough, by whom the borough, burgesses and inhabitants have been governed. And that lands, liberties, &c. had been granted to the burgesses and inhabitants; sometimes by the names of "The Burgesses of Wallingford"—"The Mayor, Burgesses and Inhabitants of the Town of Wallingford"—"The Mayor, Burgesses and Commonalty of the Borough and Town of Wallingford."

That the mayor, bailiffs, burgesses, commonalty, and inhabitants of the Borough and Town of Wallingford have enjoyed privileges and exemptions, &c., by prescription, according to the charters formerly granted to the City of Winton.

And that the king, at the petition of the mayor, burgesses, and commonalty, had constituted the Borough of Wallingford a free borough. That *the burgesses and inhabitants* of the borough shall for ever hereafter *be one body politick* and ^{Corporate} ~~incorporate~~, by the name of "the Mayor, Burgesses, and Commonalty of the Borough of Wallingford."

That there shall for ever be one mayor, one recorder, one town clerk, six aldermen, two bailiffs, and one chamberlain, of the elder, principal, and better and more honest sort of *inhabitants and burgesses* of the said borough. And that there shall be eighteen persons of the said borough of the better discretion, and more honest men and inhabitants of the same borough, to aid and assist the mayor, &c.

There was also a clause in this charter directing the manner in which the members of Parliament were to be elected, to which we shall immediately refer.

In 1688, evidence was given that those that *paid Scot and Lot* to the church and town, and those only, had a right to vote: and therefore the committee resolved, and which was agreed to by the house, that "the right was in the *inhabitants* of the borough, *paying Scot and Lot* to the church and poor, and no others." At this time Dr. Brady's book had not been published—and it was subsequent to the charter of Charles II., and consequently clearly excluded any right which could be set up under this charter.

Domesday.
Berkshire.
1688.

In the seventh year of the reign of Queen Anne, about 19 years after Dr. Brady's book had appeared, upon an election petition, it was insisted for the petitioner, according to the above resolution, that the right was in the *inhabitants paying Scot and Lot*. The sitting member, probably founding himself upon the new doctrine of Dr. Brady, insisted that the mayor, aldermen, bailiffs, and eighteen assistants, had the right of election, besides the inhabitants, paying Scot and Lot.

1709.

The evidence given in support of that right appears in no degree to establish the point; for it only amounted to this, that they had never known any alderman or assistants refused—but it was added, that none had lived without the borough until these few years—the usage for that short time, of course, could not be a ground for deciding; and till the aldermen lived without the borough, their right to vote could not be disputed, because they would be entitled as inhabitants paying Scot and Lot.

The sitting member also relied upon the charter of Charles II., mentioned before; a clause of which gave the right of election to the mayor, aldermen, bailiffs, and their assistants, called the eighteen. But it is the clear and indisputable law, as laid down in Glanville, that such a charter could not, under any circumstances, have altered the right of election. However, the committee decided that the right was as contended for by the sitting member—thus, contrary to law, introducing the select body of a corporation to vote, when there was a clear, explicit, previous decision to the contrary: and as the charter could not by law, under any circumstances, affect

Domesday. the question, still less could the recent usage of three or
Berkshire. four years, when the charter itself had been granted 40 years
before.

The result of this case therefore is, that notwithstanding the arguments of Dr. Brady to the contrary—notwithstanding a guild had actually existed in the borough, from the time of Henry II. (if not before)—the privileges of the place have ever been, and still are, exercised by the inhabitant householders, paying Scot and Lot—and nothing has ever interfered with this right but the addition made by the
1709. modern decision of 1709: the illegality of which, it is hoped, has been clearly and distinctly proved.

WINDSOR.

Windsor we find entered at the head of the Terra Regis in Berkshire; and King William held it in demesne, as Edward had done. Neither the burgesses nor the borough are mentioned. There appear to have been 95 *hagæ*—26 of which were quit of gable. It seems probable that Windsor was not a borough until the 5th of Edward I.,* when that king granted a charter, declaring that the town should be a free borough; and that the good men, their *heirs*, and successors, should be free burgesses—and should have a merchant guild, and all the liberties and free customs which the burgesses of other boroughs used. That they should be free from toll;—and the king's justices itinerant in Berkshire should hold as well their common pleas as the pleas of the forest;—and the capital gaol of that county should be in this borough, the delivery of it being also there.

This charter differs from many which will be cited hereafter—inasmuch as they generally grant exemption from suits of shires and hundreds, and exclude, by a non-intromittant clause, the sheriffs and other ministers of the crown: but in this there is the peculiarity, that the power of holding pleas for Berkshire in this place is reserved; and a county gaol is

* Car. Reb. Claus. 106. Bodl. Lib. Oxford. Dodesworth's MS.

established there, the delivery of which is to be within the ^{Domesday.} borough. This probably explains the non-exclusion of the ^{Berkshire.} king's officers. However, from the express words of the charter, the obvious intention of the crown appears to have been, that this place should in other respects resemble other boroughs.

The important privilege of returning members to Parliament seems to have been enjoyed from the earliest times, as it had representatives in the 30th of Edward I., and in the 1st of Edward II.; but in the 2nd, 5th, and 8th years of the reign of that king, the sheriff returned, that "the bailiffs of the liberty of the seven hundreds of Windsor made him no return." However, in the 1st, 4th, 6th, 7th, 12th, 15th, and 16th years of the same reign, and till the 14th of Edward III., it returned members; as well as in the 3rd, 11th, and 13th of Richard II.—the 8th of Henry IV.—2nd of Henry V.—and in the 1st, 3rd, 5th, and 20th of Henry VI. 1301. 1307.

But there were many parliaments to which it sent no members; and particularly between the 6th and 28th of Henry VI., when it commenced returning by indenture—probably in consequence of a new charter granted by that king in the 17th year of his reign. 1438.

By that grant, King Henry recites the charter of the 5th of Edward I., and confirms to the burgesses all their customs in the most ample terms: further granting, that "the *burgesses* and the *good men* of the borough, *holding and residing* " within it, and their *heirs* and successors *remaining there*, " should be free from tonnage, passage, &c.; and grants " them all fines, amercements, &c., of all *men, tenants*, and " *residents*, of and in the borough, with the day and year, " and waste and stray; and all forfeitures in all his courts; " cognizance of all pleas of lands; and all transgressions and " all contracts within the borough, before the mayor and " bailiffs." And provides, that "no person shall hold any " view of frank-pledge, or other court, unless by license or " consent of the burgesses." With power of "hearing and " determining all matters and disputes as justices of the " peace—so that they shall not determine any felony." And

Domesday. with a non-intromittant clause, as to the sheriff—steward of
Berkshire. the household—and all other officers of the king; excluding
 the king's clerk of the market; and granting them assize of
 bread and ale—the goods of felons—and the return of writs:
 so that no sheriff, bailiff, or other minister of the king, should
 enter the said borough to execute their office, except from
 defect of the burgesses themselves.

By this extensive grant, the king not only confirms the
 charter of Edward I. and gives additional privileges,—but, if
 there had been before any question as to the exclusive nature
 of the jurisdiction of the borough, from the general words of
 the charter of Edward I., it is expressly removed; because,
 not only is any other officer precluded from holding a view
 of frank-pledge—but the most extensive civil and criminal
 jurisdiction is granted to the mayor and burgesses.

This charter is upon the same roll with one to Rochester,
 and Kingston-upon-Hull, which latter place received the
first charter of municipal incorporation ever granted, and to
 which we shall hereafter particularly refer. It immediately
 follows this charter to Windsor, which contains no words
 of incorporation,—that of Hull having the phraseology used
 at the present day.

The return of the 25th of Henry VI. states, that the mayor
 and *commonalty* of the burgesses unanimously assembled
 together, of their common council elected the members; and
 the common seal of all and singular the commonalty and
 burgesses having election and joining in those presents was
 affixed to the instrument, which was signed by the mayor,
 the bailiffs, constables and others; and that return was pro-
 duced in support of the right of the *inhabitants* to vote in the
 year 1679, 1689 and 1690.

1679, 1689,
 1690.

1449
 27 Hen. VI.

In the 27th of Henry the sixth, there was another return
 in the same form, which had a more extraordinary fate, for
 1679. it was produced on behalf of the *inhabitants* in 1679 and
 1690, 1689. 1690, but in favour of the *select body* in 1689.

1451.

In the 29th of Henry VI. there was another similar return,
 which was produced in support of the right of the *inhabitants*
 in 1679, 1689 and 1690.

In the 6th year of Edward the fourth, a charter was granted to the then mayor, bailiffs, burgesses and *inhabitants* of the town,* that “the *burgesses and inhabitants* should for ever thereafter be one body in deed and name, and one perpetual community, incorporated, of one mayor and two bailiffs, and the burgesses of the same town; and that the mayor, bailiffs and burgesses should have perpetual succession, and should be persons capable in law to hold lands and tenements, to them and their successors; and by the name of Mayor, Bailiffs and Burgesses should plead and be impleaded.”

Domesday
Berkshire.
1466.
6 Edw. IV.

In the following year, the 7th of Edward IV., a return, in a form somewhat different from those which have preceded, was made, witnessing, that the bailiffs and *comburgenses* had elected, and the indenture is under their common seal. This was also produced in support of the right of the *inhabitants* in 1679, 1689 and 1690.

1467.

It is somewhat singular that this return should be in a new name, which the charter does not justify: for the term, “*comburgenses*,” had not been used before, and does not occur in the charter. The probability is, as we have observed in the former case of Wallingford, that there was no essential difference in the substance of these returns: and that they were all made by the same class of persons, viz. the burgesses or inhabitant householders paying scot and lot. Moreover Brady states,† “that this return is much different.”—However the only difference is the substitution of *comburgenses* for *communitas*; and with a strange inconsistency he adds, that “the *communitas burgensium*” in the former return, “and the *comburgenses* in the latter, were the same body of men:” which no one can doubt: and if so, the whole of those charters are explained. The community of burgesses which existed before the 6th of Edward the fourth, not being incorporated, in that year ~~the class of persons who were~~ ^{the class of those} the burgesses ~~having~~ ^{who had} been admitted, and the other inhabitants who ought to have been admitted, were

* Mad. Fir. Bur. p. 29.

† Brady, 149.

Domesday. not exceeding 30 of the most worthy *inhabitants* to be the
Berkshire. common council, and assistants to the mayor and bailiffs ;
 who are to be called the fellows or benchers of the guild-hall :
 being 13—the mayor, two bailiffs, and 10 aldermen. He
 then triumphantly asserts, “ Here we have the mystery of
 “ the community or corporation unfolded : it consisted of a
 “ mayor, two bailiffs, and 28 or 30 brethren of the guild-hall,
 “ who were the mayor, bailiffs, and burgesses according to
 “ the ancient usage and custom of the town.”

A glaring misrepresentation of the nature of the charter ;
 which, if it had occurred in a private transaction between
 individuals, would be characterised with terms from which
 we are desirous of abstaining. For the incorporation is of
 the *inhabitants generally* ; and from them are to be selected
 a few for the purpose of the executive government of the
 place. But to assert in defiance of the charter, the contents
 of which were before him, and of all the documents which
 we have before quoted, that this select body was the whole
 corporation, unless indeed a part can be equal to the whole,
 is contrary to first principles. However, it is after such
 reasoning, that Dr. Brady riots in his triumph, and continues :
 “ If the ancient charters, writings, and monuments of all
 “ burghs or pretended burghs in England, were inspected,
 “ judiciously examined, and compared one with another, the
 “ meaning of the word ‘*communitas*,’ community, or (as
 “ vulgarly translated) the commonalty, would be as clear and
 “ perspicuous as it is in this place of Windsor, or any other
 “ city or borough.”

These extravagant assertions of the author, are the more
 unpardonable, because he omits to mention the return of the
 1554. 1st & 2nd of Philip and Mary, which was made by “ the
 “ mayor, bailiffs, and *burgesses, together with the community*,
 “ who of their common consent elected:”—expressions too
 clear to admit of a doubt upon the point for which he had
 laboured so disingenuously. The returns of the 2nd, 3rd,
 4th, & 5th of Philip and Mary, and the 1st of Elizabeth,
 were precisely the same ; and were produced to support the
 1679, 1689, right of the *inhabitants* in 1679, 1689, and 1690:—1689
 1690.

being the year in which Dr. Brady's book must have been in the press.

Domesday.

Berkshire.

1584.

In the 26th of Elizabeth, a record occurs,* which it may be necessary to cite, as further illustrating the case we have before quoted from Dyer.† The mayor and bailiffs of Windsor having had a debtor in their custody, allowed him to escape; and a *capias ad satisfaciendum* having been awarded to the Sheriff of Berks., it was held, "that debt would lie for the escape, against the mayor and bailiffs, and not against the sheriff;"—which, evidently, is founded upon the principle, that the franchise, or jurisdiction of the borough, was separate and distinct from the bailiwick of the sheriff. The return of this year, and many subsequent, were produced by the sitting members in 1679, for the purpose of supporting the right of the select body; though one of the 17th of Charles I. was produced on the same occasion, to support the right of the *inhabitants*. From these and other records it seems, the returns of members to serve in Parliament, had sometimes been made by the mayor, bailiffs, and burgesses, not exceeding 30; and sometimes by the mayor, bailiffs, burgesses, and *inhabitants* at large, but more commonly by the former only.

1679.

1642.

This usurpation appears to have continued till the 15th of Charles I., when it was brought before the consideration of the House of Commons. And the question was, whether the *inhabitants in general*, or the particular choice of the mayor, bailiffs, and some few of the town, should have the power of election.

1640.

In the report by Mr. Serjeant Maynard, reference is made to the incorporation by Edward IV., as well as to returns in the reigns of Edward IV. and Henry VIII. One of the candidates was chosen by the mayor and special officers; and it was decided, that the charter being an incorporation of *inhabitants*, they of right ought to choose, and not the special men. And upon this report it was resolved by the House, that *all the inhabitants of the borough, have generally the right of election.*

Vide ante 121 • Cro. Eliz. p. 26.

Domesday. However, in the 13th of Charles II. the year after the
Berkshire. Restoration, another report was made by Mr. Serjeant
 1661. Charleton, upon which the question seems also to have been,
 whether the right was in the mayor, bailiffs and burgesses
 not exceeding 30, or in the *inhabitants at large*—and strange
 as it may appear, notwithstanding the documents we have
 quoted, it is stated, that it was proved in evidence that the
 borough returned members to Parliament before the time of
 Edward IV. (which should have excluded the charter of that
 king from affecting the right of election); and it was added,
 that the burgesses, before that charter, were elected only by
 the mayor, and a select number, not exceeding 30,—being
 the corporation of the borough. And that it appeared by
 witnesses, and returns in several reigns, that the election
 for above 70 years had been by a select number, consisting
 of the mayor, bailiffs and burgesses, not exceeding 30, and
 1640. not by the inhabitants at large, who never chose until 1640.
 —Undoubtedly a very strong case, and, if true, irresistible;
 but the reader who has perused the preceding documents
 will perceive, that there is no pretence for these assertions,
 and that the committee of 1640 had in fact negatived them.
 A reasonable suspicion of the fairness of the proceeding of
 1661 may be entertained, because the report states only the
 evidence upon one side,—none appearing for the inhabitants,
 and therefore the committee seemed to have decided without
 any resistance on their part.

This subject, however, appears to have been brought
 1679. again before Parliament, about 18 years afterwards, when
 31 Chs. II. the case underwent a very full examination. The question
 was precisely the same as before. On the behalf of the
inhabitants were produced the charter of Edward I.; the re-
 turns of the 30th of Edward I.; 25th, 27th and 39th of
 Henry VI.; the 7th of Edward VI.; the 2d, 3d, 4th and 5th
 of Philip and Mary; the 1st of Elizabeth; and the 16th and
 1640. 17th of Charles II., with the report of Serjeant Maynard in
 1640; and parol evidence was also given. The decision in
 1661 was stated to have been made by the committee, be-
 cause the candidates who at that time stood on the right of

the inhabitants were wanting in the records, which were ^{Domesday.} mislaid by one Starkie, who afterwards owned the fact. And ^{Berkshire.} it was proved, that at the election the inhabitants had gone to the poll and claimed to be admitted, but were refused by the constables and tything men.

From the evidence given for the sitting member, it appeared, that the mayor, bailiffs and chief burgesses had gone to the poll, and shut the doors while they made freemen.—That after the precept was read, the doors were ordered to be opened, but there being a tumult the constables were directed to keep the peace and the doors, and then the mayor, bailiffs and burgesses went to the election. Several of the witnesses said, that the doors were open at the election, and that there were no orders to shut them. And in support of the right of the select body, the returns of the 38th of Henry VIII.; 1st Edward VI.; 14th, 30th and 43d of Elizabeth; 1st, 7th, 18th and 21st of James I.; 1st, 3d, 15th and 16th of Charles I.; and 13th and 29th of Charles II. were produced. Also the report in 1661. And the town book; whereby it appeared, that three several elections in Queen Elizabeth's reign were by a number not exceeding 30.

But the committee resolved, that “ *the mayor, bailiffs and burgesses had not the right of election, but that all the inhabitants had.*”

In 1680, in conformity with the general law, to which we have before alluded, founded upon the laws of King William, it was added, as a necessary qualification to the right of election, that those only who paid scot and lot were entitled to vote. 1680.

Charles II. in the 16th year of his reign, made a grant (the present governing charter), which in effect confirms that of James I., upon which we have previously observed. 1664.

In the 1st year of James II. that king presented the town with a new charter, which, upon the Revolution, was abandoned. 1685.

In 1689, the right of election for Windsor was again brought before Parliament. The Prince of Orange having, upon the 1689.

Domesday. 23d of December 1688, directed, that all such persons as had served as knights, citizens and burgesses in the reign of King ~~James~~ ^{Charles} II., should assemble at St. James's, on the 26th of December—they accordingly met there; and from thence the members went to the House of Commons at Westminster. It was then moved by Mr. Pelham, that one of the members might take the chair, and for that purpose he nominated the Right Hon. Hen. Powle, who being generally called on, and no person contradicting it, he went up to the clerk's table, and sat himself at a chair placed there for that purpose.

Mr. Powle, at the time he took this unauthorized step, was the member for Windsor, and he seems to have been one of the persons appointed to prepare the address which was agreed upon to the king. Upon the Prince of Orange's letter for electing members for the Convention, and which required that the election should be made by such persons only as according to the ancient laws and customs, ought to choose members for Parliament, Mr. Powle became one of the candidates for Windsor, upon the interest of the mayor, bailiffs, and the select body. And notwithstanding the decisions we have before seen against this right, he was returned upon their votes, and, upon the meeting of the House, was elected Speaker. Against his return his opponent, Mr. Adderley, who stood upon the rights of the *inhabitants*, petitioned.

1689. On May the 2d, 1689, Colonel Birch made the report of the committee. The question before them was precisely the same as on former occasions—and upon the behalf of the *inhabitants* the same return, records, and previous decisions of the House were given in evidence, as well as parol proof, to the same effect. For Mr. Powle, and the right of the select body, it was urged, that all the records produced upon the other side were evidence for them; they being under the common seal, and dated in the guild-hall,—the place for corporate acts, and that the former resolutions of the House were upon a mistaken ground.—It was insisted that the borough was made so by the charter of the 5th of Edward I.; and that there were, in that charter,

direct words, making them a corporation—as also a grant of ^{Domesday.} sending burgesses to Parliament by relative words, giving ^{Berkshire.} them all the rights of burgesses of the borough. The return of the 27th of Henry VI. was also given in evidence; the elections of the 1st, 2d, and 3d of Charles I. were insisted upon; and also the resolution of the 13th of Charles II. The committee decided that “the right was in the mayor, bailiffs, and select number of burgesses only.”

The reader will observe, that this is in direct opposition to former decisions:—that the return was under the common seal, could not, for the reasons given before, be of any weight:—still less the date in the guild-hall, where all the business respecting the borough must be transacted. —The erroneous grounds upon which the former resolutions of the House were said to be founded, are not pointed out: and it is not unusual, that those who impute mistake, are themselves mistaken. Nor would it be surprising, if they were guided by Brady; which is by no means improbable, as he was then composing his book, and was much about the Court. But, however this error might have originated, certainly the committee were wrong in confounding together the creation of a borough and a corporation:—things altogether distinct:—there being many boroughs not incorporated, and many incorporated towns not boroughs. Certainly there are words in the charter creating it a borough; but none making it a corporation: a difference we shall hereafter most distinctly point out; as well by the words of the charter of Hull, as with reference to its corporate history.

It was an egregious error to have supposed, that the charter of Edward I. granted, by its relative words, powers of sending burgesses to Parliament (at least, that they meant so at that time), because no representation of the boroughs then existed. The mistakes, therefore, appear to have been altogether on the side of those who imputed them, and probably led the committee to their very erroneous decision—so contrary to all the former resolutions.

In 1690, this matter was again before Parliament, upon 1690.

Domesday. the same grounds and evidence. And they again gave a
Berkshire. similar decision—but the House rejected it;—so effectually
 annulling both this and the preceding resolution. In 1715,
 1715. the subject was once more discussed in a committee, and
 having been before thoroughly exhausted and determined, all
 parties *agreed*—that the right was in the *inhabitants* paying
 Scot and Lot, and it has ever so continued to the present
 time.

This case, therefore, so much canvassed,—so illustrated
 by documents,—so productive of determinations,—seems
 to afford a satisfactory answer to the common notion of
 the right of election being connected with tenure, of which
 traces may be found in this place:—and also of the “Guild,”
 being the origin or characteristic of a borough, of which
 there is as strong proof in this case as in any other:—or, of
 the right of election being a corporate right; there being an
 actual incorporation of the burgesses of Windsor. Freemen
 having existed there—and the right having been twice deter-
 mined to be in the select body of the corporation.—How-
 ever, eventually, the real nature and history of the borough
 was established, and the truth of the case prevailed; the
 right having been irrevocably fixed, in the *inhabitant house-
 holders paying Scot and Lot*, as the burgesses of Windsor.

READING.

Reading was not held in ancient demesne, as Brady has
 most erroneously stated; but in Domesday is described
 as a borough. There is no mention of the *burgesses*; nor is
 there any thing further in the subsequent part of the entry,
 which is material to our present inquiry. As its history,
 however, is in some degree peculiar, particularly with respect
 to the ancient guild; and as, although it possessed a corpora-
 tion and freemen, the right of election was, nevertheless,
 established to be in the inhabitants paying scot and lot;
Charters. we shall give the details of the history and charters of the
 borough.

Reading must be known to our readers, as celebrated for
 its Abbey; but whether the borough, or the abbey, was first

founded, is a question which it would now be extremely Domesday. difficult to decide. The men of Reading, on the one hand, Berkshire. claimed privileges under King Edward the Confessor; and on the other, it is supposed that Elfrida, the wife of Edgar, erected a monastery, but not on the site of the abbey. It is, however, certain, that Henry I., in the 21st year of his 1121. reign, commenced the foundation of that abbey, which became in after times so celebrated, and its possessors so powerful.

At the period we have mentioned, Henry I. granted a charter to this ecclesiastical establishment; exempting the persons, lands, and possessions from all dues, customs, ^pentage, and other charges,—and also giving to the abbot sac and soc,—toll and them,—infangthef, &c.—with all pleas and suits of courts, within and without the borough of Reading. Whatever might have been the former jurisdiction of the borough, this charter was calculated, and probably intended, to restrain it. And the power of the abbot was most likely to effect that purpose; particularly as the same king granted a second charter to the abbey, in which, entire exemption was given to the abbot and monks for all their possessions, as well lay as ecclesiastical; and that they should be free of dane-geld, and all gelds, and of aids to shires and hundreds, and all pleas, with other general words of exemption, sufficient to cover all the demands that could be made upon him, both pecuniary and personal, with reference to the forest laws and otherwise. And the charter repeats the former grant of hundreds, and all pleas, with sac and soc, and general jurisdiction.*

This, undoubtedly, must have had the effect of materially lessening the power of the burgesses; as we shall hereafter find was the case at Oxford and Cambridge. And for centuries afterwards, there were frequent struggles between the men of the abbot, and the burgesses of Reading, as to their respective jurisdictions.

Henry II. confirmed the privileges granted by Henry I. to the abbey, but demolished the castle.

Richard I. granted the town and tolls of Reading to the abbey; and in the 12th year of the reign of King John, a 1210.

* Wollascot MS. Coates' Hist. of Reading, App. 1.

Domesday. writ was directed to the sheriff of Berkshire, and to the **Berkshire.** justices itinerant, reciting that the charters of the abbey had been inspected, and it had been decided, that the abbot ought to have his court of the foreign hundred of Reading, which the king had given him as his right, concerning all assizes and recognizances, and all pleas of the crown, and this jurisdiction was ordered to be allowed. So that notwithstanding any previous rights which the burgesses might have enjoyed, their jurisdiction was ousted, and that of the abbots established.

Fol. 124, B. From the Testa de Nevill we find, that the abbot and monks had obtained possession of the borough, and retained it; so that at that time, it must have been entirely under their control. And their tenure is said to have been of the gift of King Henry. In the 15th of Henry III., there is a writ, stating the exemption of the abbots and monks from scutage.* But in this reign, the burgesses appear to have attempted to procure, at least, a partial restoration of some of their rights, particularly as to their guild; which being of ecclesiastical foundation, was probably more favourably considered, and their privileges watched with less jealousy by the abbots, than their municipal rights; and being connected with trade, was in no small degree serviceable in supplying the abbey. We therefore find, that King Henry III., in the 27th year of his reign, granted to the burgesses of Reading, who were in the merchant guild, that they for ever, should be free from shires and hundreds, and all pleas and tolls, and passage and coinage; and that they might buy and sell wherever they would, throughout England, without toll; and that none should disturb them, under forfeiture of 10*l*.

The burgesses, before the abbot obtained the grant of a hundred court, with civil and criminal jurisdiction, would have been free from suits of shires and hundreds; and have done that suit at their own court. But it seems from this charter, that the abbot having attained that general jurisdiction, had superseded the borough court; and the freedom from suit at the abbot's hundred, was granted by

* Mag. Rot. 15. Hen. III. 1 Mad. Exch. 674.

this charter, only to those of the guild, and not to the bur-
gesses generally.

Domesday.
Berkshire.

In the same year, the men of Reading gave 100*l.* to the king, for a writ, that they might possess the same liberties which they had used in the time of the Kings of England, his predecessors.

1252.

It is probable, that the abbot was alarmed at the resumption of jurisdiction which the burghesses seemed disposed to attempt, by the two charters they had obtained; for, in the same year, a writ issued to the sheriff of Berkshire, stating that the men of Reading had been summoned to show the warrant for their liberties, which they said they had from King Edward, and which were contrary to those the abbot had by the charters of King Henry and King John. And why they came armed into the town of Reading, and expelled the bailiffs of the abbot by force, against the liberties which the abbot had by the charters of the king and his predecessors. And also why day and night they placed in the town snares for the bailiffs and servants of the abbot, and prevented them from doing the duty enjoined by him. And the men came, and showed no liberty, neither by charter nor any other manner, except by their mere statement: therefore the sheriff is commanded, that he does not permit the men of Reading to use any liberty against the abbot contrary to their charters; but that he should protect him, his men, and bailiffs, in their liberties.

1252.

From this document, it is clear that the struggle between the abbot and the burghesses was for the exclusive jurisdiction.

But the disputes between the abbot and the guild of Reading were in some degree appeased, by a concord made between them in the following year in the Court of King's Bench, between the stewards of the guild of Reading and the burghesses, who were the plaintiffs,—the abbot being defendant.* The burghesses complained, that the abbot distrained them to plead in other places than in their common guild; and that he took from them their chepyng-gyld,

1254.

* Coates' Hist. of Reading, p. 51.

Domesday. and removed the market of the town of Reading from the
Berkshire. place where it was accustomed to be kept of old time ;
 and claimed of the burgesses other customs and services
 than they were used to do in the time of the king's predecessors : to which the burgesses would not consent. And, therefore, it was agreed, that the abbot should grant to the burgesses and their *heirs*, that the corn market in the town of Reading should be for evermore in the place where it was wont ; and that all other things were to be sold in the places in which they were used ; and also the burgesses should have their chepyng gyld-hall in the town of Reading, and 12 messuages which belonged to the gyld-hall, with a meadow, called Portman Brook,* yielding yearly to the abbot 6s. 8d. —where before they were accustomed to pay only 1d.

And for this concord, the burgesses grant, for them and their *heirs*, that the abbot shall choose one burgess, being of the chepyng gyld, to be the warden ; and who was to take an oath to the abbot and the burgesses, that he would keep all that belongeth to the chepyng gyld. The warden to be elected annually. And the abbot to have for the ward of the son of every burgess 4s., at the chepyng gyld, or when he shall be made burgess ; and of every foreigner half the fine which he may make with the warden, by the view of a monk of the abbot's, to bear witness in it—so that if six lawful men of the guild testify that the fine be reasonable, the monk shall have no power to refuse it.

And the burgesses grant, for them and their *heirs*, that it shall be lawful for the abbot to have every year at Lammas, 5d. of every burgess in the chepyng-gyld, in the name of chepyng-gavel ; and that the abbot may tallage the town of Reading when the king tallageth his demesnes ; and the burgesses agree, for them and their *heirs*, that it shall be lawful for the abbot and his *successors*, or their bailiffs, to keep courts in the gyld-hall, with all manner of pleas,—to have all ameracements of the gyld-hall, and of others also ; and that the key of the gyld be in the custody of the warden,—to be delivered without any contradiction to the abbot

* Now called, The King's Mead.

or his bailiffs, as often as they would keep any court. And ^{Domesday.} the burgesses acknowledge, that the meadow which lieth at ^{Berkshire.} the end of Portman Brook, belongs to the abbot.*

From this minute record, many particulars are observable. First—the abbot had evidently been encroaching upon the rights of the burgesses. Secondly—the burgesses grant for themselves and their *heirs*, clearly establishing that, although they were members of the gyld, they were not incorporated; particularly when contrasted with the grant of the abbot, which is for him and his *successors*. Thirdly—the *Portman* meadow is obviously the common meadow, (now called the king's meadow,) to be used by the men of the town, or *port*. Fourthly—the abbot being lord of the town, the burgesses had held of him by the chief rent of 1*d*. Again—the stipulation, that one of the burgesses, who is of the chepyng-gyld, should be warden, proves clearly that there were other burgesses besides those of the gyld; and that, consequently, notwithstanding what Brady says to the contrary, it was the borough, and not the guild, which made the burgesses; and that the guild was a distinct and separate establishment, not including all the burgesses. The abbot having the wardship of the sons of burgesses, as their superior lord, is evidently borrowed from the Saxon laws; and it is also clear, that every son of a burgess (not the eldest alone) was entitled to be made a burgess.

Foreigners were also made burgesses upon the payment of a fine, in the manner and upon the principles we have explained before. The chepyng-gavel would of course only be paid by those who were of the gyld—but the tallage would be paid by all the town; and we shall see hereafter, that a similar provision was made for the tallaging of Salisbury, which was held under the bishop of that place.

From this time the burgesses enjoyed their privileges more securely; for, however the municipal rights of Reading might have been before interfered with by the powerful ecclesiastics in their neighbourhood, it appears that they returned members to Parliament from the earliest period, having done so in the 26th of Edward I.

1297.

* Coates' Hist. of Reading, App. 5. Richards' MS.

Domesday. In the 28th of Edward I. the charter of Henry III. was
Berkshire. produced and read at the hustings in the gyld-hall of Lon-
 1299. don, on a complaint made by the mayor of Reading to the
 mayor of London, of the sheriff having distrained upon a
 burghess of Reading for tolls and customs; and the sheriff
 was directed to permit all the burghesses of that town to
*be toll free.** So that it is clear the burghesses of Reading
 were then permitted to enjoy the privileges which had been
 previously granted to them.

1336. In the 10th year of Edward III. there is a claim of cog-
 nizance between the bailiff of the abbot and the bailiff of the
 town.

It appears also that the burghesses returned members to
 Parliament in the 33d year of that reign, and during the entire
 of Edward II. and Edward III.; and the returns were "by
 "and for the *commonalty* of the town."

1344. In 1344, the 18th of Edward III., that king confirmed the
 charter of the 37th Henry III. which granted exemption
 from shires and hundreds, excepting only the fines from
 all pleas: which seems intended to leave them exempt
 from the hundred court of the abbot, but to subject them to
 his civil jurisdiction as to pleas. And there is another
 alteration in Edward III.'s recital of the charter of Henry III.
 in stating those who are to be free of shires and hun-
 dreds, as, "all the burghesses who are in Reading," instead
 of describing them as they were in the charter itself, "all
 those burghesses who were in the merchant gyld." An alte-
 ration, in all probability, made by Edward III. when the
 burghesses had, subsequently to the concord, obtained a
 restoration of some of their rights:—the former restriction
 having been introduced when the abbot's power was at the
 height, and before the burghesses had ventured to insist on
 their rights.†

In the 19th Edward III., 1346, in a document which
 complains of the misappropriation of the funds the abbot
 had, for the support of certain chapels and bridges, and also

* And the same was allowed again in London, in the 7th year of Queen Eliza-
 beth, 1564.

† Car. Rot. 18 Edw. III. M. 22.

for certain charities, it appears that one of them was for the widows of men who had borne office in the town, from which it seems that the municipal government was executed by the inhabitants of the place. Domesday.
Berkshire.

However, in the 25th Edward III., 1351, the disputes between the town and the abbot revived; particularly as to the election of constables, which was a part of the duty of the court leet.

Richard II. confirmed the former charters of Reading;* and, in the 14th year of his reign, the dispute between the town and the abbot, as to the right of choosing constables, came to issue, and was pleaded before the king's justices at Reading. In the course of the proceedings, the abbot's steward, at the port-mote, is mentioned; so that it seems the port-mote or court leet was held in and for the town, but before a steward appointed by the abbot. The burgesses insisted that Reading was a borough before the foundation of the abbey, which is more than probable: for had the abbey first existed, it is not likely the latter would have been created. They also contended, that they had been accustomed to elect their own officer before the abbey was founded—that they had been used to return members to Parliament—that they had a gyld-merchant—and that the abbey was out of the town.

The returns to Parliament for this reign, appear to be made by and for the *commonalty*.

In the next reign the charters were again confirmed, and the return of members to Parliament was by the mayor and *all the burgesses in the borough*; which appears to import, that they were *resident* and inhabitant.

Henry V. and Henry VI. confirmed the charter of Richard II., but the disputes between the town and the abbot continued; and the records which are extant about this period, from whence the earliest books of the Corporation commence, relate chiefly to the gyld and its officers. A stranger appears to have been made a burgess, and to have paid the usual fines; another is excused this fine as the mayor's burgess; and persons appear also to have been expelled

1448.
27 Hen. VI.

* Rot. Cart. 5 & 6 Rich. II. M. 24.

Domesday. from the town. The admissions of the sons of freemen, and Berkshire. by service, also occur.

The return of members to Parliament in this reign appears to have been by the mayor and *commonalty*.

1480. In the 20th year of the reign of Edward IV. the liberties of the town were seized into the king's hands for abuse of their privileges; and in the same reign, a tax is levied on the *inhabitants* of the town. The return at the same period is by the bailiffs and *com-burgesses*, of their unanimous assent and consent.

1485. In the reign of Henry VII. the town seems to have succeeded in supporting their rights against the abbot; and the mayor discharged two constables, as not having been made by the election of him or the burgesses, but by the abbot. This king also confirmed the charters of Edward III. and

1486. Richard II.; and by another charter in the 2d year of his reign, granted to the mayor and burgesses, that they should have the survey and correction of all men in the town;—exempting also the mayor and burgesses from being summoned as jurymen, or appointed collectors of the tenths or fifteenths.*

In the same reign, the burgesses claimed to be a body corporate;—re-asserted their usage to return members to Parliament, who were elected by the com-burgenses; and that they were discharged from suits of shires and hundreds, and were toll free. Still the disputes between the town and the abbot continued; and a reference of them to two of the judges of the Court of Common Pleas was proposed; who at last put an end to these long existing quarrels by deciding, that the burgesses should elect two constables till the next "*law-day*," or court-leet, when the abbot's steward was called upon to give them their charge, and oath, but which he refused to do; but the judges affirming, that the mayor and burgesses of the gyld-merchant were incorporated, directed that they should present three of their body yearly to the abbot at Michaelmas; and that one should be elected, to be sworn according to the concord in the time of Henry III.; and the two constables, and ten wardens of the

* Vide Coates' Hist. of Reading, p. 62.

five wards should be chosen by the master of the gyld, and the commonalty, and be sworn before the abbot; and if any person petitioned to be a burghess, his name was to be given to the abbot 14 days before he was made; a monk was to be present at the assessing of his fine, of which half was to be paid to the abbot, and the other half applied to the use of the gyld. The fine of a son of a burghess was fixed at 40s.; that of aliens were to be determined by six burghesses; and if they affirmed it by oath to be reasonable, the abbot was to accept it; and finally, the chepyng-gavel to be paid by the burghesses was fixed.

Domesday.
Berkshire.

Henry VIII. confirmed the former charters to the Borough,—the decision by the Judges;* and also granted a license of mortmain. In that reign, a burghess, who was admitted a member of the gyld, maintained his exemption from toll; and the king's letter was issued to discharge another from serving the office of collector of the 10th and 15th.

1509.

At the close of this reign the power of the Abbey was destroyed; the abbot himself was executed, and his possessions were seized into the king's hands; after which it appears that the burghesses elected their mayor, and Thomas Lord Cromwell was their high steward. The king granted to the mayor and burghesses of the guild merchant, exemption from payments to counties and hundreds, and fines and tolls.

No actual charter of incorporation had been granted to Reading, but, like many other places in England, the burghesses claimed to act in that character in the preceding reign; not, however, till a considerable period after the grant of the first municipal charter of incorporation to Kingston-upon-Hull. Even the admission into the gyld upon the payment of a fine, seems not to have been exercised arbitrarily, but every person petitioning was admitted on payment of his fine:—being consistent with the ancient common law, by which those who carried on trade were recognised as free, for otherwise they could not have traded. And as the burghesses were not confined to the

* Coates' History of Reading, p. 62, and see also ~~Charters of the Rolls Chapel.~~

Domesday. guild, but there were many not belonging to it, the whole Berkshire. reverts to the rules of the common law, by which every free inhabitant (and those who traded were free) was both bound and entitled to attend at the court leet, and there, in the presence of the mayor and the rest of the burgesses, on the presentment of the jury, was sworn and enrolled as a freeman, if he lived in the county at large; and as a burgess, if he lived in a borough.

In this reign the members for Reading were elected by the mayor, *burgesses and commonalty*.

Edward VI. also granted a charter to Reading, confirming that of Henry VIII.; and in this reign, from the entries in the borough books, the burgesses appear to have been a body elected out of the inhabitants, and not to have included the whole of them. This select body made a by-law, the legality of which it would be difficult to support; it provided that, "Forasmuch as a great incumbrance has arisen from the great number of burgesses, to the great perturbation and disquiet of the rest of the company, their minding, tranquillity and quickness, it is ordered, that henceforth no more shall be made till the present number is reduced to 30."

1553. In the reign of Queen Mary it was ordained by a by-law, that every burgess should pay 20s. over and above his accustomed fine, *as a fund for the relief of the burgesses in old age or want*. It appears also in this reign, that the burgesses did not include all the inhabitants. An entry occurs at this period in the corporation diary, of a compromise made between the burgesses and the mayor, who had been their representative in Parliament, with respect to his wages, for which he was entitled to 5*l.* being 2*s.* a day for 50 days, but he was contented to take the sum of 20*s.*, to be paid by the burgesses of the hall; although the charge ought to be borne by the *inhabitants* of the borough. From which it appears, that the inhabitants were, even at that time, considered as the persons subject to the burdens of the place, and there can be no doubt that they were also entitled to its privileges.

In the second year of the reign of Queen Elizabeth,* a Domesday.
 charter was granted to the mayor and burgesses of Reading, Berkshire.
 reciting and confirming those of Henry VII. and Henry VIII. 1560.
 and granting that Reading should be a free borough, *corporate of itself*, and *exempt from all hundreds, counties and shires*, and that the mayor and burgesses should be a body corporate, with the usual corporate powers; and it further provides, that there shall be nine of the better, more honest, and discreet *men, inhabitants* of the borough, who should be the capital burgesses, or *head burgesses*, who may elect to themselves twelve others, or more, according to their sound discretions, of the better, more honest and discreet men, *inhabitants* of the borough, who should be called secondary burgesses, or second burgesses,—the mayor, capital burgesses, and secondary burgesses, being the common council, with power to make bye-laws; and directs, that there shall be a steward, two cofferers, two serjeants-at-mace, and a clerk of the market, who is to be the mayor. The first mayor and capital burgesses are nominated, and are described as honest men, and inhabitants of the borough; the first cofferers are also stated as inhabitants; the mayor is to be a justice of the peace, with a non-intromittant clause. The mayor and capital burgesses are annually to nominate three capital and secondary burgesses, out of whom the mayor, and capital and secondary burgesses are to elect the mayor. And the mayor, and capital and secondary burgesses are to elect secondary burgesses out of *all and singular the men whatsoever inhabiting within the borough*, and are to elect the capital burgesses out of the secondary burgesses. The mayor and burgesses are to elect the stewards and serjeants-at-mace. The mayor and capital burgesses are to hold a Court of Record from week to week, and also a *Court Leet and view of frank-pledge* twice in the year; and it grants several other privileges, which do not relate to the present inquiry, excepting that reference is made to the chepyng-gavel paid by all the burgesses; and in another part of the charter, the rents

* See Charters at the Rolls Chapel.

Domesday are spoken of as to be paid and charged on the men Berkshire and inhabitants of the borough; and it is granted that the mayor and burgesses may devise their lands as they have been accustomed to do.

We should observe, with respect to this charter, that it differs from others of this period, not being expressly an incorporation of the inhabitants, but all the officers appointed are described as such, and those to be elected are to be taken from them: therefore it appears clearly throughout the grant, that notwithstanding the usage to the contrary during the reigns of Edward VI. and Queen Mary, which probably was intended to be corrected, the inhabitants were treated as the burgesses. The charter, in conformity with the common law, appears to recognize Reading as a free borough, by exempting it from all hundreds and shires, and the capital burgesses are put in the place of those, who, by the early Saxon Laws, were called the *head boroughs*. A steward is appointed, who was necessary to hold the Court Leet; and the justices of the county are excluded from jurisdiction within the borough; whilst the general power given to the burgesses of devising by will, must certainly have extended to all the inhabitants, otherwise it would have introduced a strange confusion as to the devisability of property, according as the party might or might not have been a burgess.

A striking usurpation seems to have occurred in this reign, in which the high steward, for the first time, exercised the power of nominating one of the burgesses to the then next Parliament,—said to be intended only as a personal compliment to him, or rather to Queen Elizabeth. But succeeding high stewards exercised the right, on condition of exonerating the town from the payment of the member's wages; which usage was continued for a considerable time afterwards; for in the 20th year of King James I. the Earl of Wallingford, being high steward, nominated Sir Francis Knowles, who was returned as the member. He also nominated Sir Robert Knowles, who was a candidate, but the recorder, Sir John Saunders, was elected

by a larger number of votes. The following agreement was entered in the diary:—"Seeing that the mayor and bur-^{Domesday.}
" gesses have chosen me to be one of their burgesses at the ^{Berkshire.}
" next parliament, I do hereby promise to bear my own
" charges in this service, and that they shall be quitted from
" the payment of any wages." But in 1627, the 3d of ^{1627.}
Charles I., the Earl of Banbury, the then High Steward,
nominating a stranger, the burgesses refused to elect him,
and wrote letters to the earl, requesting that they might
be allowed to continue their neighbours; and, after waiting
fourteen days without receiving an answer, they returned
their own members, which so offended the earl that he sent
in his resignation.

In the 14th of Charles I. a charter was granted to ^{1639.}
Reading, and confirmed by the Parliament under the Com-
monwealth.* It recited, that in every monarchy the safety
of the people depends upon the crown, and all authority
is derived from the prince, and kings for that purpose are
placed upon the high throne of majesty, that, as fathers of
the country, they should protect the people committed to
them; and that the burgesses had besought him to confirm
their ancient, and grant them also more ample privileges:
the king directs that it shall be a free borough, and that the
men, free burgesses, shall be a body corporate, by the name
of the mayor, aldermen and burgesses; giving them the
usual corporate powers, and directing that there shall be, of
the *free burgesses*, one who shall be called mayor, 13 who
shall be called aldermen, and 12 who shall be called assis-
tants. The charter then provides for the nomination of
three of themselves by the aldermen, out of whom the alder-
men and assistants are to elect one as mayor; and the alder-
men are to be elected by the mayor and aldermen, out of
the assistants; and three assistants, by the mayor and alder-
men, out of the burgesses; the mayor and aldermen are also
to elect the steward, the chamberlains and coroners; and
the mayor, aldermen and assistants are to make bye-laws.
The mayor, deputy mayor, the bishop of Salisbury, his chan-

* See Coates' History of Reading, p. 64. *Charter Rolls at the Rolls Chapel.*

Domesday. cellor or commissary, and the senior aldermen, and the last Berkshire. mayor, are to be justices of the peace, and the justices of the county are not to interfere: with the usual power of holding the court of record, and a general confirmation of all former privileges.

1645. In the 20th Charles I. a Mr. Ball requested to be made a burgess, or to be admitted a freeman; he was informed that the number of burgesses was full, and that no freemen, except tradesmen, were admitted.* Which answer, considering the former charters, appears extraordinary; for that of Elizabeth treats all the inhabitants as burgesses, and that of Charles the I. speaks of the assistants as eligible out of the burgesses; and therefore, it is evident there must have been burgesses beyond their number, from whom they could be elected. As to freemen, although those who were in trade were entitled to be admitted, so likewise were all other persons who were actually free, either by birth or service, although they were not in trade. And, in fact, these reasons, given to Mr. Ball, were not effectual, for he was admitted a burgess; became a candidate, and was returned: but his return was petitioned against, he having only 309 votes, and Mr. Vatchell, his opponent, having 560:—the latter number including non-freemen. Mr. Ball, however, having the greater number of freemen,—the committee decided Mr. Vatchell to be duly elected: and so, in effect, determined that the *non-freemen* had the right of voting.

1659. In 1659, before the Restoration, an unconstitutional latitude appears to have been given to the right of election in Reading, as lodgers and inmates were then allowed to vote, which, for the reasons we have before deduced from our Saxon institutions, seems clearly to be opposed both to parliamentary and municipal law.

1678. In 1678, there were four candidates, and considerable numbers voted for each; 927 for one, 766 for another; 426 for the third; and 384 for the fourth.

1685. In the 37th Charles II., the Journals contain a petition by

* See Mant's Hist. of Reading, p. 226.

the *freemen and inhabitants* of the borough, and the election was declared void. Domesday.
Berkshire.
1700.

It appears that Reading, in the beginning of the last century, was treated as distinct from the county at large, and the surrounding hundreds, as, upon the sheriff having assessed that borough, towards the payment of a sum recovered from the hundred, the question was tried at the assizes, and a verdict found for the borough.

At this date there was a petition of several *freemen, inhabitants* in Reading, *paying scot and lot*,—other freemen, not inhabitants,—divers householders residing there, paying scot and lot,—and other householders not paying scot and lot. In 1708, there was a similar petition, stating that the scot and lot men had the right of election; when this latter petition coming to be decided before the house, and evidence being received, and counsel heard, motion was made, that the right of election was in the *freemen and inhabitants* not receiving alms; and in inhabitants paying scot and lot;—several amendments were moved, and made to the question, and it was resolved—“that the right was in the freemen and inhabitants, such freemen not receiving alms, and such inhabitants paying scot and lot.” 1708.

Another petition was also presented, in 1715, by the inhabitants paying scot and lot. Before this time, the right of election had been exercised by the *pot-wallahs*, and during the poll, the town is said “to have resembled a camp of gipsies, fires being lighted in every street and alley, for even lodgers were entitled to this privilege.” 1715.

These abuses led to the above petition, and in 1716, Mr. Hampden reported, that the petitioners alleged, “that Reading was a borough by prescription, and that the election was only in the inhabitants paying scot and lot”—but the sitting members insisted that the freemen had also a right to vote. 1716.

The petitioners gave in evidence the extract from the roll of fines of the 37th of Henry III., which we have before quoted: and also the returns of the 33d of Edward I., the 1st and 19th

Domesday. of Edward II., 1st and 43d of Edward III., and the 1st of Berkshire. Richard II.

The sitting member insisted on the ancient usage, and the determination of 1708, as well as parol evidence, to show, that, before that time, all housekeepers, freemen, and eldest sons of freemen, being of age, were allowed to vote. And the committee resolved that the right was in the "*inhabitants paying scot and lot.*"

In the course of the evidence, one of the evils resulting from the right of voting in respect of freedom transpired, for the voter proved, "that after the proclamation was out for "a new parliament, he had his freedom given him to vote "for the sitting members—for which he promised his vote." And it was also reported by the committee, "that it appeared, from the evidence, that most of the bribed voters "upon either side were only freemen, and not inhabitants "that paid scot and lot."

Thus we have traced the history of Reading from its earliest period—it was clearly a borough by prescription, and there is every reason for thinking that it existed before the Abbey. One of the most striking indications of its having been an ancient borough is,—that it was divided into wards; and it appears that, from the earliest times, it was exempted from the jurisdiction of the sheriff, and separated from the county at large, of which there is decisive proof, from a circumstance very material with reference to the general view of the subject: that the inhabitants were exempt from serving upon juries, either at the sessions or assizes; nor have they ever contributed to the gaol or county rates.—There seems always to have been within the borough a guild;—and their ecclesiastical neighbours appear frequently to have interfered with the rights and privileges of the borough.—Freemen long existed within it, with all the rights of birth.—Service,—and even the modern innovation of primogeniture. Trade was also supposed to give a peculiar right to the trader—and freemen were admitted (as in many other places) to the several companies of mercers — cutlers—bell-founders — tanners —

clothiers—and vintners.—Foreigners are mentioned. Disfranchisements were frequent:—and the burgesses, as a body distinct from the inhabitants, are often spoken of in the records. Notwithstanding all these indications, so much relied upon in other boroughs, the House of Commons, with propriety rejected the guild, as a matter collateral to the borough, and the freemen, as a distinguishing and essential characteristic in the early parts of our history, but now entirely obsolete and immaterial; since all the military and other feudal tenures have been destroyed. No such distinction now existing—“all men are free.” According, therefore, to the simple rules and primary principles of our constitution, the House of Commons finally and justly decided, that “the right was in the *inhabitant householders paying scot and lot*: leaving, nevertheless, the farther act to be done, which the law required, namely, that such inhabitants should be admitted, sworn to their allegiance, and enrolled in the Court Leet:”—a qualification so essentially serviceable, for the purposes of police, good government, and practical administration of the law.

WILTSHIRE.

MALMSBURY,
WILTON,
CALNE,

BEDWIN,
DEVIZES,
CRICKLADE,

DOWNTON.

In Wiltshire, there were 16 parliamentary boroughs: Salisbury, Wilton, Downton, Hindon, Westbury, Heytesbury, Calne, Devizes, Chippenham, Malmsbury, Cricklade, Ludgershall, Old Sarum, Marlborough, Great Bedwin, Wootton Bassett; of which six only are mentioned as boroughs in Domesday;—Malmsbury, Wilton, Calne, Bedwin, Devizes, and Cricklade. Two burgesses occur in the entry of Downton; but whether they were in Downton, is not specified. There are, besides these, three other places mentioned as

Domesday. boroughs,—Warminster, Bradford, and Sudtone,—which are Wiltshire. not now parliamentary boroughs. The material facts as to Malmsbury, are the following.

MALMSBURY.

Fol. 64, B. In the borough of Malmsbury, the king hath 26 manses *inhabited*, and 25 manses, *in which there are houses which do not render geld* more than waste land. These manses render gable.

The abbot of Malmsbury hath four manses and a half, *and without the borough*, nine cozeti, which *are taxed with the burgesses*.

After which follows an enumeration of the owners of the manses.

Before the Terra Regis, it is entered, that Walter, for two parts of the borough of Malmsbury, renders 8*l.* to the king. The same borough rendered as much in the time of King Edward: and in this ferme, there were pleas of the hundred of Cimeutone and Stutelesberg, because they belonged to the king. Of money, the same borough renders 100*s.* In the same borough, Earl Harold had one field of land, in which are four manses and six others waste, and a mill rendering 10*s.*

When the king goes on an expedition by land and sea, he shall have of this borough, either 20*s.* to support his mariners, or he shall land one man with him, for the manor of Five Hides.

In the entry of Langhelai, it is said, "In Malmsbury one burgess, rendering 15*d.* belongs to this manor."

The church of Malmsbury had Sumreford. At Malmsbury, one burgess renders 12*d.*

Fol. 69, B. Edward of Salisbury held Werocheshalle—two burgesses *in Malmsbury* render 2*s.*

Fol. 70, B. Sumreford—in Malmsbury, one burgess renders 12*d.*

Fol. 72. Ralph de Mertemer held Hunlavintone, in Malmsbury, one house rendering 12*d.*

Fol. 72, B. Aldritone—in Malmsbury, *one burgess rendering 7d.* Malmsbury was clearly a borough at this time. The

manses are mentioned; some being described as inhabited, ^{Domesday.} and others as having houses, but which did not render geld ^{Wiltshire.} more than waste land: from which it would appear, that either these are placed in opposition to the inhabited manses, and were uninhabited; or, if inhabited at all (which is the more probable conjecture, because otherwise, they would be returned as inhospitable), the inhabitants were either unable to pay geld, or were persons not liable to that charge:—again establishing the fact, that there might be householders not subjected to the burdens of the place.

The manses of the abbot, which are taxed with the burgesses, are stated to be without the borough; which further confirms, that the liberties often extended beyond.

The subsequent entry as to Malmsbury shows, that it was a borough in the time of Edward the Confessor; and that some of the property belonged to Harold.

The entries in the different manors of burgesses in Malmsbury, establishes, that persons being householders in the borough, and in respect of their residence there, being burgesses; held, either in the borough or out of it, of the several mansions where they are mentioned.

The different form of expression, whether “at” or “in” the place, if minutely examined throughout the survey, might explain to which of those causes these entries might be referred.

It ought to be observed, that in one manor, a house in Malmsbury is mentioned, and no burgess. Perhaps it was not inhabited by a burgess, but by a female, or some person exempt from burgess-ship;—a probability which is much increased by the fact, that the charge upon that house, and upon a burgess, are the same.

WILTON.

Wilton is mentioned as a borough, paying rent to the king, and its burgesses are spoken of in several manors like those of Cricklade; but there is no other material entry respecting them in the borough. Fol. 64, B.

Domesday. In the Terra Regis, Calne is entered as follows :—

Wiltshire. The king holds "Cauna." King Edward held it, and it was never gelded; therefore, it is not known how many hides there are there. The land is 29 carucates. In demesne there are ploughs and servi, villains, borders, coliberts.

Fol. 64, B.

There are 45 *burgesses*. The villains render the farm of one night.

To this manor, Nigel holds of the king a church with six hides of land. In demesne there are two carucates—servi—villains—bordarii—cozeti—and there are 25 *burgesses* rendering 20*s*.

Fol. 66. The Bishop of Salisbury held Cainingham.—In the borough of Caune, one house belongs to this manor, rendering 20*d*. by the year.

Fol. 70. Calstone.—In Calne, one *burgess* renders 11*d*.

Calne was a borough in the time of King Edward, and as there are both villains and *burgesses* belonging to the manor, it is clear, that the holding under it was not sufficient to make a *burgess*. It is also evident, that villains might reside within the borough—and they would not be *burgesses*. The lands at Calne are to this moment divided, much in the same way as they are in Domesday. A lay and ecclesiastical manor;—and the resident householders upon each of them, being of free condition, and not villains, would be *burgesses*—and consequently, we find that there are *burgesses* belonging to the church there; which, though of ecclesiastical possession, was held by Nigel, a lay-man.

There is a house in the borough still belonging to Eaininges, which at that time was occupied, either by a female or one of the villains; and this entry, like those of Malmesbury, is decisive to show, that those occurring in other manors were with respect to the property in the borough held under them, and not that the *burgesses* resided in those respective manors, as some have very erroneously conceived. Thus, the *burgess* in Calne, who is entered in the manor of Calstone, was an inhabitant householder, residing in Calne, holding under the manor of Calstone—which has still some houses in Calne.

Domesday.

Wiltshire.

BEDWIN.

Bedwin was also a borough in the time of King Edward ; the entry is so similar to Calne, that it requires no further observation, and is as follows :—

King Edward held it. It never gelded—nor was it hid. Fol. 64, B.
The land is four score carucates, or less.—In demesne there are 12 carucates, and 18 servi. There are four score villains, and 60 cozeti, and 14 coliberti.

To this manor belong 25 *burgesses*. This vill renders the farm of one night, with all customs.

DEVIZES.

Devizes is also included in the king's land, under the name of Theodolveside—at least, if that name is applicable to it.* Some have conjectured, that this name referred to Tilsit ; but it is not probable that so small a village should have had so many *burgesses*.

The entry is as follows :

The king holds Theodolveside. King Edward held it. Fol. 64.

It did not geld,—nor was it hid.

The servants—coliberts—villains—and cozets, are mentioned,—and 66 *burgesses*.

This entry establishes nothing material, excepting that Devizes (if it were the place intended,) was a borough in the reign of King Edward ; and at the compilation of the survey, there were as many as 66 *burgesses*.

CRICKLADE.

The borough of Cricklade is not mentioned in Domesday by itself, but its *burgesses* occur in many manors, as in Aldeborne—Ramsberie—Badeberie—Piritone—Leddentone—Lediard—Chiseldene—Clive—Colecote. In the whole there are 29 enumerated.

The church of St. Peter of Westminster is stated to hold Fol. 67.
the church of Cricklade, and hath there also many *burgesses*.

* In the Testa de Nevill both these names occur—Devizes and Theodolveside ; but whether they were different appellations for the same place is not apparent.

Domesday. These extracts, expressly stating that the burgesses are in Wiltshire. Cricklade, confirm the inference we have before drawn, that all the manorial entries spoke of burgesses residing in the borough.

BRADFORD.

Fol. 67, B. In the entry of Bradford there are 33 burgesses mentioned, but it is not called a borough, nor does any thing more occur respecting them.

WARMINSTER.

Amongst the demesnes of the king, Warminster also is entered; and 30 burgesses are stated to be "*there*," but nothing farther occurs.

DORSETSHIRE.

DORCHESTER,
BRIDPORT,

WAREHAM,
SHAFTESBURY.

There were in Dorsetshire, nine parliamentary boroughs, including Weymouth and Melcombe Regis—viz. Dorchester, Poole, Lyme Regis, Weymouth and Melcombe Regis, Bridport, Shaftesbury, Corfe Castle, Wareham,—of these, only four—Dorchester, Bridport, Wareham, and Shaftesbury—are spoken of directly as boroughs—as having burgesses—or are entered separately from the county. Poole, Lyme, Weymouth, Melcombe, and Corfe, are not mentioned.

Before the lands of the king, with Bridport, Wareham, and Shaftesbury, is the following entry of Dorchester.

DORCHESTER.

Fol. 75. In Dorchester, in the time of King Edward, there were 172 houses; these, for all service of the king, defended themselves, and were gelded for 10 hides—to wit, to the use of the huscarle, one mark of silver, except the customs, which belong to the farm of one night.

Now there are four score and eight houses, and 100 altogether destroyed, from the time of Hugh, the sheriff, until now. Domesday. Dorsetshire.

The abbey of Nortune had in Dorchester one house. In the Bishop of Salisbury's manor of Cerminstre, there is entered in Dorchester one burgess. Fol. 78, B.

There is in this entry of Dorchester nothing material, except the number of houses, and the reduction which had taken place by the destruction of many of them.

The entry altogether tends to confirm the opinion,—that the origin of boroughs was the collection of population in the houses built in the place: and the two concluding entries confirm the point we have before alluded to, of some of the houses being in the possession of persons who were not bound to be burgesses, and of inhabitants residing in the town being burgesses, although they held of foreign manors.

BRIDPORT.

The entry of Bridport is to the following effect:—

In Brideport, in the time of King Edward, there were 120 houses, and for all service of the king, they defended themselves, and were taxed for five hides; to wit, to the use of the huscarles of the king half a mark of silver, except the customs which belong to the farm of one night. Now there are there 100 houses, and 20 *are so destitute that those who dwell in them cannot pay the geld.* Fol. 75.

The holders of these houses not paying geld would clearly not be entitled to the privileges of the borough. This is another striking confirmation of the doctrine, that there never was a period in our history in which all the inhabitants indiscriminately were burgesses, but only those who, according to the Laws of William the Conqueror, paid scot and lot; and those who, according to the Saxon laws, had given their pledges, and bound themselves to the law at the Court Leet.

Domesday.

Dorset-
shire.
Fol. 75.

WAREHAM.

In Wareham, in the time of King Edward, there were 143 houses in the king's demesne. This town, for all service of the king, defended itself, and was taxed for 10 hides; to wit, one mark of silver to the huscarles of the king, except the customs which belong to the farm of one night.

Now there are 70 houses, and 73 are altogether destroyed from the time of Hugh the sheriff. On the part of St. Wandregintius, there are there 45 houses standing, and 17 are *waste*. On the parts of other barons, there are there 20 houses standing, and 60 are destroyed.

The Bishop of Salisbury had Cerminstre, and

In Wareham two burgesses, with 12 acres of land, belong to this manor.

Fol. 80, B. Robert Fitz Gerold had Povintone.

In Wareham, one burgess rendering 2s.

SHAFTESBURY.

The entry of Shaftesbury follows next, and is to this effect:—

Fol. 75. In the borough of Shaftesbury there were, in the time of King Edward, 104 houses in the king's demesne. This town, for all service of the king, defended itself, and was taxed for 20 hides; to wit, 11 marks of silver to the huscarles of the king. Now there are there 66 houses, and 38 are destroyed from the time of Hugh the sheriff until now. On the part of the abbess there were, in the time of King Edward, 153 houses; now there are there 111 houses, and 42 are altogether destroyed. There the *abbess hath 151 burgesses, and 20 manses vacant*, and one garden.

It should be observed, with respect to these four places, that they have all returned members to Parliament from the earliest times, and that the persons who have been decided as entitled to vote for members of Parliament have been the inhabitants paying scot and lot.

In Dorchester there is a corporation, the members of which have never voted; and, excepting that some intricacy

has been introduced into the right of election by the distinction between personal and real property, and a question also with respect to residence, the right is substantially as stated above.

Domesday.
Dorset-
shire.

In *Bridport* there has been a corporation ever since the reign of Queen Elizabeth; and, in 1628, the two bailiffs, and 13 capital burgesses, claimed to have the right of election, and to exclude the commons, to whom they gave no warning of the election. On their behalf it was said, that they had the right, because they contributed towards the expenses of the members; and it was agreed by the major part of the committee, that the "*commoners*" had voice in the election, and that it was void, as they had no warning. The House also resolved, that the "*commonalty*" in general had the right; and that the election was void.

In 1715, the term "*commonalty*," in the above resolution, was decided to mean the "*inhabitants*;" and in 1762, to include only the "*inhabitants paying scot and lot*."

As to *Wareham*, it should be first observed, that the circumstance to which we have so frequently adverted, of part of the borough being held of different lords, and of different manors, is confirmed by the entry of the number of houses in different parts of the town; one part belonging to St. Wandregisolius, and other parts to the barons.

In 1690, the right was agreed by all parties to be in the *inhabitants paying scot and lot*, and in the *freeholders*;—and yet this place also has a charter of incorporation.

In *Shaftesbury*, likewise, there is a corporation:—Yet in 1696, the exclusive right of that body to vote was negatived by two resolutions:—the first of which decided, that the right was not only in the mayor and burgesses of the borough:—the second, that the right was only in the "*inhabitants paying scot and lot*:"—which decision has been acted upon ever since.

As in substance the burgesses of all these places are decided to be the same class, so are the entries with respect to them substantially the same; though one may be more particular than another, or omit that which in another

Domesday. is inserted. They are all separated from the county,—
 Dorset-
 shire. the strongest proof of their being boroughs. Yet they all
 vary in such immaterial circumstances as would be likely
 to occur where the returns were made by different per-
 sons. Such, for instance, as the burgesses not being men-
 tioned by name in Dorchester. But this would easily be ac-
 counted for, by its being known to every body that it was
 a borough. The essential point, with a view to the pay-
 ments to the king, are the houses: these are distinctly
 enumerated, as well those remaining, as those which were
 destroyed.

SOMERSETSHIRE.

MILBORNE PORT,	BATH,
ILCHESTER,	TAUNTON,
LANGPORT,	AXBRIDGE.

There were eight Parliamentary Boroughs in Somerset-
 shire,—Bristol, Bath, Wells, Taunton, Bridgewater, Ilchester,
 Minehead, Milborne Port. Of these four only are men-
 tioned in Domesday; Milborne Port, Taunton, Bath, Il-
 chester.

The entry of the first of these among the king's lands is
 as follows:—

MILBORNE PORT.

Fol. 86, B. The king holds Meleburne. King Edward held it: it was
 never taxed, nor is it known how many hides are there.
 The servi—villains—and bordarii, are mentioned.

In this manor there are 56 *burgesses*, with the *market*,
 rendering 60s.

All Meleburne, with the aforesaid appendages, renders
 four score pounds of white money, 9s. 5d. less.

In the time of King Edward, it rendered half the farm of
 a night, and a fourth.

Fol. 91. The church of St. Edward holds Cumbe.

In Meleburne, six burgesses render 50*d.*

Domesday.

Under the manor of Meleburne, in the possessions of Earl Hugo, are entered—

Somerset-
shire.
Fol. 93.

In Meleburne five burgesses.

ILCHESTER.

Of Ilchester the notice is very short. It is entered amongst the king's lands thus:— Fol. 86.

In Givelecestre are 107 *burgesses*, rendering 20*d.*; a market with its appendages, rendering 10*l.* Fol. 86.

Walter de Dowal holds *Cari*.

One *burgess* in Givelecestre.

BATH.

Bath also is amongst the king's lands, and the entry is as follows:— Fol. 87.

The king holds *Bade*. In the time of King Edward it gelded for 20 hides, when the shire was taxed. There the king hath 64 *burgesses*, rendering 10*l.*, and four score and 10 *burgesses of other men* render there 60*s.* The king hath six waste houses.

This borough, with Estone, renders 60*l.* and one mark of gold; besides this it renders money 100*s.* Edward rendered 11*l.* for the third penny. *One house is removed.* Hugh holds it, and it is worth 2*s.*

The church of St. Peter of *Bade* hath, in the same borough, 24 *burgesses*, rendering 20*s.*

TAUNTON.

The entry of Taunton is, that the bishop of Winchester holds Taunton: after which succeeds an enumeration of the lands,—villains,—bordarii,—servi, and the coliberti; and then follows the entry, that there are 64 *burgesses* rendering 32*s.* (that is 6*d.* each); and the market is also mentioned. Fol. 87, B.

Of these four boroughs it will have been seen, that three of them were the demesnes of the king; the fourth, Taunton, was held by the Bishop of Winchester. They all returned

Domesday. members to Parliament from the earliest period : and three of
Somerset- them have had decisions, establishing that the burgesses of
shire. those places are *the inhabitants paying scot and lot* ; though, in some few particulars, the constitutions of those boroughs have by modern usages been made to vary ; nevertheless the entries of all are in substance the same ; they differ only in the rents or services they owed to the king. Of *Milborne-port* the burgesses are expressly mentioned ; the same of *Ilchester* ; and the burgesses of *Bath* appear by the entry to have been of the same description as the others. Yet with respect to that place, of which we shall have occasion to speak more particularly hereafter, the select body of the corporation have been decided to have the right of voting, notwithstanding all the returns were generally by the citizens ; and there were freemen in the borough, who in 1660, claimed to join in the election.

There is no report in the journal of the determination of the committee in the case of *Bath* ; but Mr. Prynne,* appears to hold out, that it was decided, or ought to have been decided, against the freemen ; and upon his representation of the arguments, and probably in pursuance of Dr. Brady's publication, it seems that in 1706, the right was determined to be in the mayor, aldermen and common council only. With respect to which decision we shall subsequently have occasion to make some observations. In the meantime it is only necessary to observe, as to this entry in Domesday, that *Bath* paying its geld when the shire was taxed, is another proof to show that these boroughs were treated as separate from the shire, although in this instance they are entered generally amongst the lands of the king. It should also be remarked, that, as there was a reference to the other barons in the entry of Wareham, so also in confirmation of our former observations, that the burgesses in the different boroughs might belong to other lords, and be held of other manors,—the entry here is expressly of “the burgesses of other men.”

With respect to *Taunton*, the burgesses are entered in the

* In the Second Volume of his Brev. Parl. Red., p. 318.

same manner as in the other boroughs ; but its history has ^{Domesday.} been very peculiar. It returned members from the earliest ^{Somerset-} period, and notwithstanding it was incorporated in the ^{shire.} 29th Charles II., the right of election was declared, in 1715, to be in the *inhabitants* : but, by one of those perversions of the law, which local usages have introduced, it was not confined, as the common law would require, to the inhabitant householders paying scot and lot, duly admitted and sworn as burgesses ; but it was extended to *pot-wallers*,—a supposed right of election which prevails only in three boroughs in England, viz. in Tregony, Honiton and Taunton. In each of which we shall have occasion hereafter to show, that it has been an innovation unauthorized by the simplicity of our common law,—bearing with it the best proof of its being so, in the frauds, uncertainty, and abuses with which the exercise of this right is accompanied :—and which establish it to be incapable of being reduced to any reasonable rule or regulation ; almost impracticable ; and open to every abuse.

In 1775, this right of election seems to have been acted upon without further consideration, excepting that the difficulty was experienced of defining what a pot-waller was ; and one reasonable restriction at least was affixed, that it should be accompanied with the qualification of a parochial settlement. If actual inhabitancy, instead of merely boiling a pot, which is only one instance to prove inhabitancy, had been insisted upon, the right would, by whatever name the possessors might have been called, have been brought within some reasonable accordance with the law : as it is, this decision appears to have authorized a most unreasonable extension of the right, beyond any thing which legal principles would justify.

There is another peculiarity with respect to Taunton which should be remarked, as showing, that the existence of a corporation in the place is in no degree necessary, either to make it a borough or to enable it to return members to Parliament : but the being incorporated is a matter collateral to both. For Taunton, like most other places, was a

Domesday borough, and sent members to Parliament, before it was incorporated. It afterwards obtained a charter of incorporation.

Somersetshire.

In 1775, and for a long period before that time, the mayor of the corporation had been the returning officer; but by neglect in electing the proper municipal officers, the corporation became dissolved. Yet it has continued a borough: it has ever since returned members to Parliament: and the returning officers are, according to the common law, the constables, appointed by the jury at the court-leet of the bishop.

LANGPORT AND AXBRIDGE.

Besides the parliamentary boroughs, there are two others mentioned in Somersetshire—*Lang-port* and *Axbridge*. Upon the former of which it may be necessary to make a few remarks. Of the latter, *Axbridge*, the burgesses only are slightly mentioned. But *Lang-port* is expressly described amongst the king's lands as a borough; and is so entered at the commencement of the return for Somersetshire, immediately after the manor of Somerton,—Thus—“there is there “ a borough, which is called Lang-port, in which dwell 34 “ burgesses;” and five of the burgesses are described as being “ *in* Lang-port, and belonging to the manor of North- “ currie.”

It must be observed, that these burgesses, in conformity with the doctrine for which we have contended, are described as dwelling *in* Lang-port. In the time of Queen Elizabeth, an exemplification was granted of the extract from Domesday, for the purpose of showing that the people of Lang-port were entitled to certain privileges, from their borough being ancient demesne; which we shall see hereafter was done with respect to many other boroughs, particularly Calne.

In the reign of James I. Lang-port was incorporated—that, however, we shall have repeated opportunities of showing, does not alter the essential character of the place; but only produces the effect of giving the burgesses, who existed before, the right of holding their lands and possessions in perpetuity to them and their successors, under a corporate name.

Domesday.

Somerset-
shire.

It is a striking circumstance, that in the charter of incorporation, Lang-port is said to be held by borough English; for which there seems no pretence. However, the houses within it are, in many documents, described as *burgages*; but there are other properties—as closes, cottages, the chapel, and the school-house—which are not so described. If, therefore, there really were any peculiar privileges belonging to burgage tenure, Lang-port would seem to be entitled to them. But the fact is, that every borough was held by burgage tenure, from London to the smallest in the country:—it being the very nature and essence of a borough, that it should be held by that species of tenure: which is, in truth, holding in sockage, or by free tenure:—having in it nothing peculiar to any particular borough, but being one uniform system of tenure, as general and uniform in its nature as freehold, gavel-kind, borough English, or any other of the numerous methods of holding. Notwithstanding, however, Lang-port was a corporation, and was held in burgage tenure; it had all those accompaniments which would belong to a borough under the common law. From the books containing the proceedings of the place, it appears that it had a *port-reeve*:—that a court-leet was held:—that the jury at that court made their usual presentments; and amongst other things, presented the different officers of the borough. There is no selected body of the burgesses; but all the *inhabitants* are treated as such; the chief burgesses, as well as the other officers, being selected from them; and the former are appointed for life, unless in the meantime they shall *depart from and dwell out of the borough*. As it has not returned members to parliament, there has been no temptation to pervert or abuse its privileges:—and therefore it seems to have continued much in the same state as the common law left it.

Domesday.

DEVONSHIRE.

EXETER,

OAKHAMPTON,

BARNSTAPLE,

TOTNESS,

~~PLYMOUTH,~~
LIDFORD.

In Devonshire there were 12 parliamentary boroughs—viz. Exeter, Plymouth, Oakhampton, Barnstaple, Totness, Honiton, Tavistock, Plympton Earle, Ashburton, Berealston, Tiverton, and Dartmouth. Of these, four are described as boroughs in Domesday, or mentioned by their burgesses—viz. Exeter, Barnstaple, Oakhampton, Totness.

EXETER.

Fol. 100. The city of Exeter is entered separately, at the beginning of the returns, thus—

In the city of Exeter, the king hath 300 houses rendering customs; these rendered 18*l.* a year—of this, Baldwin, the sheriff, has 6*l.* In this city there are 48 houses waste, after the king came to England. This city, in the time of King Edward, did not geld, except when London, York, and Winchester gelded. When an expedition went by land or sea, this city served for five hides. But Barnstaple, Lidforde, and Totness, served as much as the city itself. The burgesses of Exeter have without the city, 12 carucates of land, which render no custom, except to the city itself.

The Bishop of Constance has in Exeter, three houses and one waste, which were in the demesne of King Edward, and rendered custom.

Drago holds of him there, six houses. Of these, four were quit in the time of King Edward; but two rendered 16*d.* of custom. This Drago retained.

Fol. 103, B. In the city of Exeter, the Abbot of Tavistock hath one house, which he had in pledge of a *burgess*; and it was accustomed to render to the king, 8*d.* for custom.

Fol. 104. The church of Creneburnens hath in Exeter, the church

of St. Olave, and seven houses, rendering 4*d.* and 8*d.* of Domesday.
custom; and one house which did not render custom.

Devon-
shire.

Earl Morton hath in Exeter, one church, and one house, Fol. 104, B.
 and one virgate, which were in the demesne of King Edward.

Baldwin, the sheriff, holds of the king, in Exeter, seven
 houses, which were in the demesne of King Edward. Besides
 these, he hath *other 12 houses in the city itself, which belong
 to the manor of Chent.*

The same Baldwin holds Chent.

To this manor adjoins 11 *burgesses* in Exeter, rendering 53*d.* Fol. 106, B.

The same Judhel hath in Exeter, one house, which, in the Fol. 108, B.
 time of King Edward, rendered 8*d.* of *custom*.

William Chieure hath in Exeter, two houses, which ren- Fol. 110.
 dered, in the time of King Edward, 16*d.*, by the year, of
 customs.

Walter Dowai hath in Exeter, 10 houses, which Asgar
 held in the time of King Edward. He hath there also *one
 house in pledge of a burgess*, of which the custom is retained.

Richard Fitz Turoidi hath in Exeter, one house, of which Fol. 112, B.
 he retained *the custom of the king*.

Ralph Pagenel hath Lestintone. In Exeter, one house, Fol. 113, B.
 rendering 10*d.*

Ralph de Pomerei holds in Exeter, six houses, of which Fol. 114, B.
 he hath retained the custom of the king—this is 3*s.* 4*d.*

Rualdi Adobed hath in Exeter, one house which renders Fol. 115.
the king's custom.

Tetbald Fitz Reners hath one house in Exeter, which ren- Fol. 115, B.
 ders 8*d.*, to the king, of customs.

Alured Brito hath in Exeter, one house, which renders 8*d.* Fol. 116.
 of customs.

Osberni de Salceid hath in Exeter, one house, of which he Fol. 117.
 detains *the king's custom*—this is 8*d.*

Godebold hath *two houses* in Exeter, which rendered, in
 the time of King Edward, 16*d.* for *custom*.

Exeter appears to have been one of the considerable cities
 in England, before and at the time of the survey—as it is
 stated not to have gelded, except when London, York, and
 Winchester did. And considering the position of these

Domesday. four cities, they seem to be disposed in nearly the same situations with respect to the limits of England—in the east, west, south, and north.

Devon-
shire.

The service which Exeter did, appears equal to that of the three boroughs of Barnstaple, Lideforde, and Totness.

The burgesses are stated to have some land without the city; which was, in all probability, used in common by the citizens, and was usually without the walls, though within the liberties. As those who enjoyed the benefit of it lived within the city, and paid custom for their houses, it is but reasonable that they should pay none for the land they had in common—by somewhat the same principle as farm-houses are not liable to pay tithes: they rendered therefore no custom, except to the city,—which probably was nothing more than an acknowledgment, upon putting their cattle into the common—in many places called an “income.”

The numerous houses entered as belonging to the other several manors, are all described as being *in* Exeter, or by some other term denoting their local situation within the city. The identity of these houses with the burgesses, seems to be established by two or three circumstances: one, that the custom of a house and of a burgess are the same—viz. 8*d.*; and in other places it is spoken of generally as the “king’s custom,”—it probably being well known that 8*d.* was the fixed sum. In the Abbot of Tavistock’s possession, as well as Walter Dowai’s, the houses and burgesses are mentioned together; as they each have a house in pledge of a burgess. And in confirmation of what we have before said, of houses being within the boroughs, although they belonged to distant manors, it is stated, that Baldwin, the sheriff, holds 12 houses in the city itself, which belong to his manor of Chent. The same occurs again in the entry of the manor of Chent; of which it is said, “to that manor belong 11 burgesses *in* Exonia”—which probably ought to be translated, in the liberty of Exeter.

Domesday.

Devon-
shire.

BARNSTAPLE.

The entry of this place is as follows:

The king hath the borough of Barnstaple. King Edward Fol. 100.
had it in demesne.

There are within the borough 40 burgesses, and 9 are with-
out the borough.

There are 23 houses waste, after the king came into
England.

The bishop hath in Barnstaple, 10 burgesses, and seven Fol. 102.
houses waste; and in the entry of Frammintone, one other
burgess.

Baldwin, the sheriff, hath in Barnstaple, seven burgesses, Fol. 105, B.
and six houses waste.

The same holds Ascerewelle: in Barnstaple, two Fol. 106, B.
houses. Fol. 113.

And Robert de Albermarle has in Barnstaple, two houses
waste, rendering 4*d*.

Nine of the burgesses of Barnstaple are stated to be
without the borough. These, like the common lands of
Exeter to which we have referred, must be considered as
being within the liberties, though without the walls.

OAKHAMPTON.

It is also entered, that Baldwin, the sheriff, holds of the Fol. 105, B.
king, Ochementone,—and there lies the castle:—the lands
in demesne are mentioned; also the lands and Bordarii—
four burgesses—and the market.

We have before observed, that the castles were usually
separate from the borough. The entry of the manor of
Oakhampton seems to confirm that position; for the expres-
sion with respect to the castle is, *ibi sedet castellum*: had it
been in the borough, the expression probably would have
been, in analogy to other entries, *ibi est in burgo*.

TOTNESS.

Judhel holds of the king, *Totenais* borough, which King Fol. 108, B.
Edward held in demesne. There were within the borough,

Domesday. 100 *burgesses*, *five less*, and 15 without the borough, tilling the land.

Devon-
shire.

This borough did not geld, but when Exeter gelded,—and then it rendered 40*d.* for its geld.

If an expedition goes out by land or water, between Totenais, Barnstaple, and Lideforde, as much service is rendered as Exeter renders.

Totness also has its *burgesses* without the borough. These must be taken as being within the liberty; which is more probable from their being described as tilling the land, no doubt belonging to the borough, or otherwise it would not have been mentioned with it.

LIDFORD.

Before we quit Devonshire altogether, it is fit to observe, that another place, *Lidford*, not now returning members to Parliament, is mentioned in Domesday as a borough, and as having a considerable number of *burgesses*; also lands, both within and without the borough: but the observations before made, with respect to Exeter, Barnstaple, Oakhampton, and Totness, apply equally to this place, and therefore need not be here repeated.

It should be further remarked, that in many parts of the returns for this county, there seems to be a studied variation in the use of the terms, “*tenet*” and “*habet*;” the former seems generally to be applied to freemen entered as belonging to the manors in the county at large; the latter appears to be usually applied to the *burgesses*, as if describing actual occupation.

CORNWALL.

Of the one-and-twenty boroughs which existed in Cornwall, the greater part of them occur in Domesday, but none are described as boroughs, nor are their *burgesses* mentioned;—circumstances, which will be hereafter explained by the dates of the several charters granted to those places, at much later periods.

MIDDLESEX.

LONDON,

WESTMINSTER.

The return for Middlesex, is subject to almost the same observation, as Cornwall;—there is no borough mentioned within it, nor any material entry with respect to burgesses; being chiefly confined to one, respecting some burgesses of London; and others of the manor of Staines; but to what place they belonged, is not distinctly specified. And there is no document to shew that Staines ever was a borough, nor is it mentioned as such either by Camden, Lambert, or any other author.

It is a striking circumstance, that London should not be entered in Domesday book, either separately, or in the county of Middlesex; the latter, however, may perhaps be explained, by its being always separated from that county. The former is not so easy of solution, unless it be explained, as has been suggested by Sir Henry Ellis,* that it had peculiar and extensive privileges granted to it, before the compilation of Domesday;—a suggestion, the probability of which is somewhat confirmed by the fact—that Winchester, like London—one of the most considerable cities in the earliest periods of our history—is not mentioned as a borough in Domesday; but the burgesses only are referred to, in almost the same manner as those of London: and Winchester had its own separate Domesday book, called the Book of Winton, to which we have before alluded.

* See Sir H. Ellis' *Introduct. to Domesday Book*, vol. i. p. 190. 1833.

HERTFORDSHIRE.

HERTFORD,

ST. ALBAN'S.

In Hertfordshire, there were only two parliamentary boroughs,—Hertford and St. Alban's; both of which are mentioned in Domesday: the latter only by its burgesses. But of the former, there is a lengthened separate entry, preceding the returns for the county.

HERTFORD.

Fol. 132. Hertford is described as having been a borough in the time of King Edward; and then possessing 146 *burgesses* in the soke of King Edward.

After which follows the singular expression, strongly connecting the burgesses with their houses,—“*Of these, Earl Alan has now three houses, which then and now render custom.*”

Eudo Dapifer has two houses, which were Algar's; and then and now rendered custom. And the same Eudo has a third house which was Ulmar's, not rendering custom. Goesfrid de Bech three houses rendering custom. Humfrid Ansleuile holds under Eudo, two houses with a garden: of these, one was let to a certain reeve of the king; and *another* with the garden, *was of a certain burgess*; and now the burgesses themselves reclaim these, as unjustly taken from them—again expressly connecting the burgesses with the houses.

King William has eighteen other burgesses, who were the men of Earl Harold and Earl Leuuirri, rendering all customs.

The rest of the entry continues much in the same form; and at the close of it, the *suburb* is mentioned.

Villains and servi are spoken of in this county, as in the former; and also sockmen.

Among the lands of the Abbey of Westminster, it is entered,

that the abbot holds Escewell;* and there are stated to be there, 14 *burgesses*: and there are 49 shillings and four pence of the toll and other customs of the *borough*. Domesday.
Hertford-
shire.

Among the lands of the church of St. Alban's, is entered the town of *St. Alban's*; 46 *burgesses*, and 11 pound 14 shillings a year of the toll, and other rents of the town; and that the *burgesses* have half a hide.

Among the lands of Earl Moreton in Keung Hundred is entered Berkhamstead. In *Burbio* (which probably means, in the suburb of that town), there are 52 *burgesses*, who render four pounds of toll; but there is no further mention of them, nor to what borough they belong. Ten *merchants* are spoken of at Cestrehunt. Fol. 136, B.
Fol. 137.

Amongst the land of Ranulph, the brother of Ilger, in Brachinges Hundred, the entry of Stanestede mentions *seven burgesses*. Fol. 138, B.

Among the lands of the king's thanes in Hertford Hundred, there is an entry, that Peter, a *certain burgess*, holds two hides of the king, in Dodesdone. Fol. 142.

From these entries, it is clear, that burgesses had existed in Hertford from the time of King Edward, and that they were the householders;—*houses and burgesses being convertible terms, excepting where the house paid no custom.*

Of the burgesses of St. Alban nothing material is mentioned, nor of those of Ashwell, Berkhamsted or Stanestede. It however appears by the entry of the land of the king's thanes, that a burgess held lands in Dodesdone; which is confirmatory of the suggestion we have before made, that although the burgesses entered in the several manors held of them, they did not reside in the manor, but in the borough, of which we shall have hereafter a striking instance in Chester. And that the reader may be satisfied that the merchants were not the burgesses, as supposed by many writers, we have a separate entry in this county of 10 merchants, which occurs also in Berkshire,—in Nottingham,—Chester,—and there is an entry of the men of the market of Tectebury, in Staffordshire. As the survey of Hertford so clearly

* Athwell, fo. 135.

Domesday identifies the burgesses with their houses, we shall here
Hertford- trace the further history of that borough, for the purpose of
shire. establishing, that *the inhabitant householders were the real burgesses of Hertford.*

1297. This place returned members to Parliament 26th Edward I. who were elected per communitatem burgensium; and it continued to send members from that time to the 50th of Edward III.

1331. In the 5th year of Edward III. the castle and borough of Hertford were extended, and the jury find that they were held, in capite, of the king. And as the castle and borough are mentioned separately, it appears to confirm the position we have before adopted, that the castles were generally separate from the borough.

We have also, in the same document, some account of the elections of the municipal officers. The jury say, that the bailiff of Hertford ought to be elected by the *commonalty* and the town; who make their election every year, in the court next after the Feast of Michaelmas, as well of the bailiff and sub-bailiff, as of all their other officers. Michaelmas was the time when the court leet was held; and there can be little doubt but that these elections were made in that court, according to the general law and practice of the country.

1419. After the reign of Edward III. Hertford only sent members in the 3d and 10th of Richard II. and the 7th of Henry V.

1468. In the 7th of Edward IV. the sheriff of Hertfordshire returned, that there was no city or borough in his county from whence any citizens or burgesses could be elected. The probability is, that either the population was so reduced that they could no longer hold their courts, and continue their borough rights; or that they were too poor to pay the wages of their members, and therefore, for a time, relinquished the liberties and privileges of their borough.

1553. But in the first year of Queen Mary, a charter was obtained upon a humble petition from the *inhabitants* of this borough, whereby the Queen granted that it should be incorporated, of one bailiff and burgesses; and that the *inha-*

bitants, by the name of the bailiffs and burgesses, should be a body corporate, &c.

Domesday.
Hertford-
shire.

The charter further granted to the bailiff, the power of admitting as burgesses all such *men, tenants, and inhabitants* within the borough, as should be necessary for its government.

This clause from the charter of Mary, giving to the bailiff the power of making burgesses, requires some remarks. We have already seen, from the Saxon laws, that it was the duty of the king's officer in every borough, to take care that all the inhabitants within it should be duly sworn, and give their pledges—which they were bound to do after they had been in the borough 40 days; and if they did not do so within the year, they would be presented by the jury at the Court Leet. To the former part of this law there was, at that period, an exception as to villains, who, belonging to other lords, were not bound to do this suit and service, unless, they had resided in the borough away from their lords, more than a year and a day. As long, therefore, as the doctrine of villainage continued to exist, and in practice, it was a question very material for the officer of the borough to consider,—whether any particular person whom he was about to swear as a burgess, was or was not a freeman; for if he were not, the officer might render himself liable to an action by the lord of the villain, for having withdrawn his villain or having received him as a fugitive. The last instance, however, of villainage is in the reign of Henry VIII. In that of Queen Mary, therefore, this head of the law had become in a great degree obsolete, and there was no longer any reason—either why the crown should not, with respect to the rights of the lord, grant such a clause as was contained in the charter of Queen Mary; nor why the bailiff, or king's officer, should not act upon it, by admitting any person who was an inhabitant householder within the borough to be a free burgess; it being clear that he must be a freeman, inasmuch as villainage had ceased. This is the real explanation of these clauses, which were at that time first introduced, and which, with the change of the law,

Domesday. ought to have put an end to all the distinctions of freedom
 Hertford- by birth, service, or marriage; *all persons, after the reign of*
 shire. *Henry VIII. being, in point of fact, free.*

As a further proof that the grant of the queen did not interfere with the right of election—in confirmation of the doctrine laid down in Glanville's Reports—it should be observed, that, notwithstanding this charter, the burgesses did not return members to Parliament till 1624, the 22d James I., when it was directed that they should do so by a committee, to whose proceedings we shall hereafter refer.

1605. In the 3d year of the reign of James I., that king granted a charter to the mayor and burgesses of Hertford, reciting that it was an ancient and populous borough; and that the burgesses had, by different names, enjoyed divers liberties, as well by charter as by prescription; that the bailiffs and burgesses had petitioned to be made a body-corporate, by the name of "the Mayor, Burgesses and Commonalty," which was accordingly granted, with the usual corporate powers: and amongst other things, it was directed, that ten of the better and most worthy *inhabitants*, who were to be the capital burgesses, should be of the common council; that there should be 16 of the most discreet men of the commonalty who should be assistants to the mayor; and the first ten capital burgesses appointed, are described as *inhabitants*. The other provisions of the charter resemble those of that period, and are in spirit and effect the same as that of Queen Mary; excepting that they are more lengthened and numerous. It does not appear that the clause in the grant of that Queen, as to the making of burgesses, is repeated in this charter.*

1624. In the 22d of James I., the right of Hertford to return members to Parliament, after its long discontinuance, was brought before the celebrated committee, the proceedings of which are reported by Mr. Serjeant Glanville,† by four several petitions from the boroughs of Amersham, Marlow, Wendover, and Hertford; stating, that they were ancient

* Vide post. p. 180.

† Page 87, et seq.

parliamentary boroughs, and ought to send members to Par-^{Domesday.}liament; and complaining that the sheriffs had for a long ^{Hertford-}time neglected to send warrants to them for electing mem-^{shire.}bers. These petitions being held material, the matters thereof were seriously examined and discussed by the committee. Mr. Hakevill was counsel for the boroughs; and Sir Robert Heath, the solicitor-general, was one of the committee; who after a long debate alleged, that information had been given to his majesty, that very many boroughs in several parts of the realm might make the like claim, which might peradventure give occasion of offence to his majesty, and cumber the House with an excessive and unnecessary number. Mr. Noy and Mr. Selden were ordered to make search among the records concerning this business, and to report what they found. Accordingly Mr. Selden reported, that there were but two boroughs unreturned, standing in the like case with these: whereupon the committee proceeded to the further hearing of the matters in question; and in the bundle of returns of those who were summoned to the council or parliament at Northampton, in the 1st of Edward I., the names of the burgesses who served for these four boroughs were mentioned; and in the schedule to the writ for the county of Hertford, in the 26th of Edward I., two burgesses are returned for the Borough of Hertford. The other three places also sent members in the 28th Edward I.; but no records were produced from the 28th Edward I. till the time of the hearing of the case, being an interval of 325 years.

1297.

1299.

Upon this the committee were of opinion, "that these boroughs ever had a right to send burgesses to Parliament:" for these reasons, first, that the right to return members ought to be proved by matter of record out of the returns and rolls of memorandums touching former parliaments, and other matters of record; secondly, that the returns produced were sufficient proof that these boroughs had once sent members to parliament, however they came since to be discontinued; and it appears that the main objection to their

Domesday. returning was the long discontinuance and disuse, in not
Hertford- sending burgesses for above 300 years; for which, their po-
shire. verty, in not being able to pay the wages of their members,
 was suggested as an excuse; and it was added, that as they
 were contented to undergo that burden, there was no reason
 to deny their petition. And, lastly, it was urged in behalf
 of the boroughs, that the liberty of sending burgesses to
 parliament, is one of that nature and quality that it cannot
 be lost by neglect; and if such a neglect may be permitted
 in one, so may it be in more, and consequently in all
 the boroughs of England; and then it might follow, that, for
 want of burgesses, there should be no parliament; and
 as for these boroughs, it did anciently appear that they
 were *parliament boroughs by prescription*, and *not by charter*;
 for every of them had their *several foreins*, and did
 pay *fifteens*, as *parliamentary boroughs*, and not as other
 boroughs or towns. It appears that the king, before these
 resolutions were reported to the House, sent to the two chief
 justices for their opinions on this point; whereupon they
 certified his majesty that it was just writs should be
 awarded.

In the Journals,* it is also mentioned, that a statute in the
 reign of Edward I. recited that Hertford then served in par-
 liament.

1605.
 21 James I.

Notwithstanding the above statement, of there being a
 charter to Hertford in the third year of James I., the reader
 should be informed, that none of that date is to be found
 upon the roll of charters at the Rolls Chapel; but there is
 one of James II., in the fourth year of his reign, "incorporat-
 ing the burgesses and inhabitants." However, it is stated
 upon the Journals,† and also by Carew, that "a charter
 "was granted by James I. to Hertford—reciting, that it was
 "an ancient borough; and that the burgesses had, by
 "several names, enjoyed divers ancient liberties and fran-
 "chises, as well by divers letters patent of former kings
 "and queens, as well as by divers prescriptions and cus-
 "toms. And, granting that, the mayor and capital burgesses

* Jour. 697.

† Jour. 708.

“should have power to make as many of the inhabitants of ^{Domesday.} the borough, or the parishes, burgesses, as they should ^{Hertford-} think necessary or profitable for the borough—so only that ^{shire.} the burgesses inhabiting without the borough, should not “at any time exceed three.”

Upon the former part of the clause we have already observed, in the charter of Queen Mary. As to the exception in favour of three non-residents, contained both in this charter and that of Mary, it is probably to be explained by the usage of making *the members*, in conformity with the parliamentary writ, “burgesses,”—and also, the having a competent person to be the steward or *recorder*, who, as a lawyer, would in all likelihood not reside in the borough.

In 1618, there was a mandamus issued by the Court of King’s Bench, to restore a burgess, of the name of Clark,* who had been expelled from his franchise for using contemptuous language to the mayor, which was held no just cause of removal—and therefore he was ordered to be restored. 1618.

In 1640, there appears to have been a petition from the freeholders and freemen of the county and borough of the town of Hertford; but nothing was done upon it. 1640]

In 1690, there was also a petition of the *inhabitants*, stating, that before any charter was granted to them, they had sent members to Parliament, who were elected by the *inhabitants*: that, in 1681, the mayor, and some of the corporation, granted freedoms to great numbers of clergymen, and others, living remote, in order to outweigh the inhabitants and legal voters of the borough; and that at the last election many of these honorary freemen were, notwithstanding exception taken to them by the inhabitants, admitted to poll,—of which the inhabitants complained, as tending to destroy their ancient privileges. 1690. 1681.

Certainly they could not have resorted to a more unconstitutional course—one more contrary to law, or more likely to introduce great and mischievous abuses—of which too many instances afterwards occurred in other boroughs. It

* Cro. Jac. 506.

Domesday. must be added, with regret, that they have been too much
Hertford- protected and sanctioned by the courts, and committees
shire. of the House of Commons.

1698. However, this particular abuse at Hertford seems to have
 10WILL.III. been speedily brought under the consideration of the court, and to have met with the indignant condemnation of the then chief justice, Lord Holt—that sound and constitutional lawyer. The report is as follows:—"After several motions "and debates at the bar, leave was given by the court to "file an information, in nature of a quo warranto, in the "name of the attorney-general, against the mayor and "aldermen of *Hertford*, to know by what warrant they admit "persons *who did not reside* within the borough to the free- "dom of the corporation. And Holt, chief justice, said, that "if the defendants were found guilty, they should be fined."*

1700. Notwithstanding the strong intimation of Lord Holt, it appears, in 1700, two years afterwards, from a petition of some of the *inhabitants*,—that the mayor, at the election permitted several pretended freemen to poll, who were arbitrarily and contrary to their charter made so, in the first year of James II. In consequence of which, the *inhabitants* complained to the Parliament, in the first year of the reign of King William; and the then mayor, and several of the aldermen, promising to desist from those practices for the future, the petitioners abstained from further proceedings. The mayor, and some of the aldermen, having again violated the rights and privileges of the borough; one of the candidates in the next year, presented a petition, in which he complained, that the mayor had admitted great numbers to poll who had no right to vote, not being "*inhabitants*, in "whom the ancient right of electing was, before the charters "of incorporation were granted; nor having been inhabitants "of the borough, or the parishes thereof, when sworn "burgesses—without which qualification, the mayor and "aldermen had no power to make them." An assertion, which the candidate was fully justified in making, by the decision of Lord Holt.

* Ld. Ray. 426.

The *inhabitants* also in a petition stated, (as the fact is,) Domesday. that the mayor and aldermen were only empowered, by the Hertfordshire. clause we have before observed upon, to make as many burghesses and freemen as they should think fit, of the "*inhabitants*" of the *borough*; and not above three in being at a time of the inhabitants of the *parishes*: yet the mayor and aldermen, a short time before the Parliament held in the first of James II., did arbitrarily make great numbers of persons, who were *neither* inhabitants of the borough nor parishes, *freemen* or *free burghesses*, who being admitted to poll at that election, and for the Parliament held the first of William and Mary—several of the now petitioners complained of the said practices; upon which, the then *mayor* and *aldermen* promising to *forbear the like* for the future, if the petitioners would not prosecute the said petition, they desisted: but the last mayor and majority of aldermen have made *more such freemen*; and the now mayor, at the late election of members for this present Parliament, did admit as many of the *pretended burghesses* to poll as offered themselves. Upon these petitions, the committee replied, ^{on 11th} that the right of election was the point controverted,—the petitioners insisting that it was in the inhabitants—and the sitting member, that it was in the burghesses or freemen, as well as in the inhabitants. And another question was—how those ought to be qualified who were made free.

The charters of Queen Mary and King James were read in evidence,—though it is clear from the decisive authorities in Glanville's Reports, that they could not, in any degree, have affected the right of election; but that the burghesses who were entitled to vote, must be the same class as those who voted at the elections in the reigns of Edward I., Edward II. and Edward III.

The returns of the 26th of Edward I., by the *commonalty* of the burghesses; and that of the 13th of Charles II., which was by the 16 burghesses who were assistants, and all the other *inhabitants* of the borough; and admissions of freedom also from 1640 to 1678, under the charter of King James, were given in evidence; with some in 1695, 1697 and 1700;

Domesday. and parol testimony as to the usage of the borough, Hertford-
shire. fixing the time when honorary freemen were first admitted to vote, to have been about 40 years before that period; that previously they had not voted,—but ever since had been admitted.

For the sitting member, contrary to all proof and general history, and the facts of this particular borough—which was not incorporated till the reign of Queen Mary—it was insisted that Hertford was both a borough and a corporation by prescription; and they produced an ancient book to show, that persons living out of the borough, as well as inhabitants, were made free in 1596, 1598, 1600, 1606 and 1612. But these were admitted, as appears from the journal, for the purposes of trade,—being brewers,—fishmongers,—shoemakers, &c.

They also produced in evidence the returns of the 3d of Charles I., by the mayor, stewards, assistants, burgesses and town clerk; also, two returns of the 13th Charles II.; and to prove the usage of the borough, they called a former recorder, who spoke to the elections from 1669, at all of which the freemen had voted; and that Sir William Cooper was carried by the freemen; and also stated he found many gentlemen made free before he knew the town. Another witness said, that he had known Hertford ever since 1665; that he never knew any honorary freemen refused or scrupled;—that he had voted, though he lived out of the town;—and he added,—that *honorary freemen* never concerned themselves in any other business of the town, but elections.

It is impossible not to feel surprise, that the committee did not instantly express their indignation at so palpable a breach of the freedom of election, it being evident—that these non-resident freemen were colourably made, in direct violation of the express words of the charter, for the purpose of controlling the election; and were never, on any other occasions, treated as real burgesses, by being allowed to participate in any of the municipal elections or transactions of the borough. By which means the whole object of the charters (which, recognising the *inhabitants* as burgesses, were in conformity with the ancient usages of the burgh) was defeated; and the

residents, for whose benefit they were intended, were controlled in the exercise of the important privilege, of electing their members to Parliament, by the non-residents, who were expressly excluded by the charters.

Domesday.
Hertford-
shire.

Notwithstanding this plain and obvious answer to the case insisted upon by the sitting member, the committee resolved,—that the right of election was not in such freemen only as are inhabitants, householders of the borough, and in such freemen as at the time of their freedom being granted were inhabitants of the borough or parish;—but that the right was in all the freemen, and inhabitants being housekeepers. The effect of which decision was— to allow the non-residents to vote, without any pretence of right, except a very suspicious usage from the time of the Restoration; the words of the charter, which must be taken as according with the ancient usages of the borough, being directly opposed to them.

Besides, there is this absurdity resulting from this decision:—that being properly confined, as far as related to the inhabitants, to householders, it excluded some of the actual inhabitants of the place: but as regarded the freemen, there was no such restriction; and therefore a non-resident freeman might vote, not being an inhabitant, whilst some of the inhabitants were excluded.

There was added to the resolution, a further qualification that they should not receive alms;—but that is the general restriction of the common law, applicable to all places.

In 1705, another petition was presented by some of the *inhabitants*, as well as the candidate; and the same question, as to the right of the inhabitants and the freemen, was again discussed before the committee. The same charters, returns, and admissions were again produced in evidence, and nearly the same testimony as before on the part of the sitting member; excepting that it appeared more distinctly than on a former occasion, that the *foreigners* had been admitted as freemen, for the purpose of carrying on particular trades.

1706.

This committee, correcting the error of the former, decided in conformity with the charters, that “ the right was in the

Domesday. “ *inhabitants*, and such freemen only, as at the time of their
Hertford- “ being made free, were *inhabitants* of the borough or the
shire. “ parishes; the number of the freemen living out of the
 “ borough not exceeding three.”

In the course of the evidence, in confirmation of what we have before observed with respect to castles, it was asserted, —that Culling’s Rents were part of the old castle, and never reputed part of the borough.

1723. In 1723, upon another petition, the right determined in 1705 was *agreed* to be the right of election; and evidence was again given, that the castle was always esteemed to be without the borough.

In this manner the right of election has ever since been exercised.

So that, with the exception of continuing the freemen as voters—whose peculiar right is founded upon the obsolete law of villainage, and ought not therefore now to be continued—the privilege of being burgesses at Hertford is at the present day the same as it was in the time of our Saxon ancestors, in the inhabitants, being householders. The freemen being also required to be inhabitants. This distinction can lead to but little practical inconvenience, as the probability is, that the greater portion of them would be householders.

ST. ALBAN'S.

The burgesses of St. Alban’s having, like those of Hertford, been eventually determined in substance to be the inhabitant householders; and as it is the only other borough in Hertfordshire, we shall pursue the history of this place through the various periods to the present time.

St. Alban’s is one of our most ancient boroughs, and in the reign of King John, there was a charter granted to the abbey. It was a borough, when members were first returned to parliament in the reign of Edward I.; but it does not appear that it was summoned in the 23d year of that reign. In the 28th of Edward I., 1300, the sheriff of Hertford returned, that he had sent a precept to the bailiff,

1300.
28 Edw. I.

who had given him no return. But in the 35th Edward I.,
 St. Alban's sent two members; and also in the 1st and 5th
 of Edward II. The following year, they had no precept
 sent to them, as appears from a petition in the 8th of Ed-
 ward II.,* in which the burgesses say, "that although they
 hold their town in capite of the king, and as other boroughs,
 ought to send two comburgesses, as had been accustomed,
 nevertheless, the sheriff of Hertfordshire, at the procurement
 and in favour of the abbot, had altogether refused to sum-
 mon or return the burgesses."

Domesday.

Hertford-
shire.1315.
Edw. II.

The answer to which petition is, that the rolls of Chancery
 should be searched, whether the burgesses of St. Alban's had
 been accustomed to come or not, and then justice should be
 done to them.

Taking the words of this petition literally, it would seem
 to import, that St. Alban's had returned members to Parlia-
 ment before the reign of Edward I., which Mr. Prynne pro-
 perly suggests is inaccurate; and there can be no doubt but
 that such a supposition is altogether incorrect. However, it
 would certainly be an extraordinary fact, that even such
 general words should occur in a document of so early a date,
 if it could not in some degree be explained.

But any person familiar with the early records of this
 country must be aware, that such general words, referring
 to the acts of former kings, and to the enjoyment of ancient
 rights, frequently occur in cases where they can be clearly
 shown as being inaccurate and unfounded, if taken literally—
 and can only be satisfactorily explained, by treating them as
 intended, merely to import—an enjoyment of rights, for a
 considerable time, and beyond living memory.

In the 6th year of Edward III., the men of St. Alban's
 appear to have suffered from the control which the abbot
 exercised over them, in consequence of the charter he had
 granted;† and therefore 31 persons, described as *men of the
 town*, for themselves, and the other *men of the town*, brought
 into Chancery a charter granted to them by the abbot of
 St. Alban's, praying that it might be cancelled,—the

1332.
Edw. III.

* Par. Rot. n. 253.

† Mad. Fir. Burg. 140.

Domesday. enrolment of it withdrawn,—and renouncing all liberties and privileges under it.

Hertford-
shire.
1407.
8 Hen. IV.

It appears from a case in the Year Book of this date,* that the Abbot of St. Alban's held the franchise of the town at this time (probably in consequence of the above surrender); and that he had three bailiffs,—a gaol,—and a *Court Leet*.

1553.
7 Edw. VI.

The burgesses, however, in succeeding reigns, acquired privileges for themselves; and in the 7th year of Edward VI., upon the petition of the *men* and *inhabitants*, obtained a charter, incorporating them, and directing that it should be a free borough and a corporation, with the usual corporate powers. That there should be ten of the more discreet and honest *men* of the borough who should be assistants to the mayor, and should be the common council. And that the mayor and principal burgesses might admit such other burgesses, of the most honest *inhabitants*, as they should think fit.

The charter then provided, that all persons who then or thereafter should inhabit in the borough, and who should be justices of the peace, within the liberties of St. Alban's, not using or exercising any art, occupation, or victualling, should not be accounted burgesses, nor allowed to intermeddle by authority of the commission of the peace, but should remain in all respects as *foreigners*.

This is a singular and unusual clause, but affording inferences to illustrate the practice and history of municipal bodies. It seems to have arisen from the peculiar jurisdiction over the liberty of St. Alban's—the justices of which, it is assumed, might wish to reside in the borough; and this clause appears to have been intended to give them the opportunity of doing so, but at the same time to exclude them from all municipal rights and interference—affording pregnant inference that all persons residing in the place,—were it not for such a special provision as this,—would have been entitled to be burgesses, and to enjoy all the municipal privileges, and particularly as the clause expressly excepts such justices as were engaged in trade, to whom it might be espe-

* Year Book, vi. 17 a.

cially important to share in the privileges of the borough. Domesday.
 The clause for the return of members to Parliament, which Hertford-
 should always be considered as confirmatory of the previous shire.
 right, rather than as a new grant—particularly where places
 have returned members before, as St. Alban's had done—is
 in the same form as similar clauses in numerous other
 charters, recognising the right of election in the burgesses,—
 such burgesses being in this instance, as the charter imports,
 and as the subsequent documents with respect to this bo-
 rough will prove, "The Inhabitants of the Town," and
 further directs, that the burgesses should go to Parliament
 in the same manner and form as in other boroughs. The
 clear object and assumption of all these provisions being,
 —"that all the boroughs should be upon the same foot-
 ing."

The first mayor, and the 10 principal burgesses, are then
 respectively appointed, and are described as *inhabitants*. In
 the clause for the annual election of the mayor, it is provided,
 "that two of the principal burgesses shall be nominated to
 the *inhabitants*, that they may elect one of them." From
 which it is obvious, that the *inhabitants* were treated as the
 general body of the burgesses; and the same provision is
 made as to the election upon the death or removal of the
 mayor.

Another clause directs, that one of the burgesses should be
 elected chamberlain; and another, that if any of the prin-
 cipal burgesses should die, *or dwell out of the borough*, or
 be removed, other *inhabitants* were to be appointed in their
 stead. Many other provisions are contained in this charter,
 but none of them are material to the present inquiry, except-
 ing that, as usual, a *Court Leet*, or *view of frank-pledge*, is
 granted; and also the return of writs, which exempts them
 from the jurisdiction of the sheriff; and the *inhabitants* are
 exempted from serving on juries.

It should also be observed, that the sum paid for the grant
 of a church is paid by the *inhabitants*, and it is made to
them by their corporate name of "the mayor and *burgesses*"
 —clearly establishing the identity of the two.

Domesday. We must not omit also to mention, that notwithstanding
Hertford- the *inhabitants* are described in the charter to be the bur-
shire. gesses, and they have always been so treated, yet the
 borough is expressly directed to be held in "free burgage;"
 and if there were really any ground for that species of
 tenure interfering with the rights of burgess-ship, St. Alban's,
 like London, and all the other boroughs, must have had a
 burgage tenure qualification for burgesses, for they were all
 held in the same manner. Towards the close of the charter
 there is a particular provision—that the gaol of the *liberty* of
 St. Alban's might be within the borough.

1632.
8 Car. I.

In 1632, another charter was granted to St. Alban's, recit-
 ing that of Edward VI., and that, upon the petition of the
 mayor and burgesses, with a view of removing certain defects
 and doubts in that charter, the king had granted, for their ex-
 planation and amendment, and for the confirmation of their
 ancient liberties, a new description of their limits, with a
 power of perambulating; and added besides, that there should
 be 16 principal burgesses and 24 assistants, but giving their
 election to the mayor and principal burgesses, with particu-
 lar provision for the election of the high steward—recorder—
 coroner—common clerk—and four attorneys of the court of
 record, who were required to be freemen of the borough.

The steward was to be elected by the mayor and principal
 burgesses;—the recorder, by the mayor and burgesses at
 large;—the coroner and attorneys, (five freemen,) to be
 appointed by the mayor and principal burgesses. And the
 power of making bye-laws is given to the same body.

The usual clause against the trading of foreigners, not free
 of the borough, is inserted.

The inhabitants were exempted generally from serving on
 juries without the borough. And no freeman who had
 served the office of mayor, was to be compelled to bear arms
 at musters.

So that the important feature of this charter appears to
 be, that the municipal elections were chiefly given to the
 mayor and principal burgesses.

1663.
16 Car. II.

Charles II. also granted to the mayor and burgesses of

St. Alban's, on their petition, a new charter—incorporating ^{Domesday.} them anew, by the name of “the Mayor, Aldermen, and ^{Hertford-} ^{shire.} Burgesses.” And—for the keeping of the peace and government of the borough, of the people *inhabiting*, and others coming—granted it should be a free borough; that the mayor and burgesses should be a body corporate, with the usual corporate powers; that one of the most honest and discreetest *men* of the borough should be chosen mayor—12 of the most honest and discreetest *men* to be aldermen for life—and to be the common council, with the jurisdiction, privileges, &c., that the principal burgesses heretofore had; and 24 assistants were to be chosen by the mayor and aldermen, to assist them.

The same offices, of high steward, recorder, coroner, and a common clerk, and four attorneys, are appointed.

That there should be there four expert and fit men, being freemen of the borough, who should be called attorneys of the court of record.

That the mayor and aldermen, after the death or removal of the then present common clerk, might nominate and prefer one other fit person, out of the freemen and *inhabitants*, to be the common clerk.

The mayor and aldermen to make bye-laws, for the good government of the borough, and of all officers, ministers, artificers, burgesses, inhabitants, residents, &c.

A fair and a court of pie powder was also granted.

The usual clause is inserted that no *foreigner out of the liberties* of the town, might henceforth (except in open markets or fairs) buy and sell any merchandise, &c., except victuals, within the borough, by parcels or retail, unless one of the parties contracting *be of the liberty* of the same borough, nor use any mystery, occupation, or handicraft, within the borough, or liberty thereof. And that none who inhabited within the borough, be impanelled upon any juries, &c. without the borough.

This charter is, therefore, in substance the same as that of Charles I., and gives the power of electing to the mayor and aldermen, as that charter had, to the mayor and princi-

Domesday. pal burgesses. In other respects, it resembles, in object and effect, the charter of Charles I., excepting that, in the clause which relates to buying and selling within the borough, foreigners are spoken of as persons *out of the liberties*,—and are contra-distinguished from persons *of the liberties*.

Hertfordshire.

1666.
13 Car. II. A body of bye-laws, made by the mayor and aldermen in 1666, was approved of, under the statute of Henry VII., by the lord chancellor and the two chief justices.

The first related to the day for the election of mayor; and required that all the *householders* should be warned, at their respective dwelling houses, to attend at the election, and give their voices. The assistants, and rest of the *inhabitants*, were to elect a mayor out of two of the aldermen, to be nominated by the mayor and aldermen. Throughout several succeeding bye-laws, the "*inhabitants*" are repeatedly spoken of as the body who are to join in the election: and in the second bye-law, they are described as the "*commonalty aforesaid*." Persons are prohibited from filling the higher offices of the corporation who were known to have been guilty of any immoral conduct, or of having been convicted of any notorious or infamous fault:—a provision as consistent with good and orderly government, as it was conformable to the early Saxon laws.

The companies in St. Alban's, and their wardens, are spoken of; but they appear to be, as we have before observed of the guilds—distinct and separate from the borough or municipal rights.

The superior officers were required to be *resident and dwelling* within the borough.

The four wards of the borough, are also spoken of; and all *strangers and new-comers* were directed to be warned to the court of the mayor and aldermen; there to give security, according to the Saxon system, for all charges that might happen to be put on the *inhabitants*, by reason of such *strangers'* abode or inhabiting within the borough; or by reason of the wife, child, or children's birth, or dwelling of any of them within it; and such as are not free of the borough.

Power is also given to the mayor and aldermen to admit

and take into the society of freemen, all persons who, not ^{Domesday.} having served for such freedom, but desiring to come in by ^{Hertford-} redemption, require to be admitted and made free, and will ^{shire.} come to the monthly courts to make their request for that purpose. And if the alderman shall think such person to be a needful and necessary man to be admitted, and they approve of him, he shall be admitted upon paying the sum of 5*l.*

The reader will perceive, how directly this bye-law is in conformity with the Saxon institutions—putting the admission of the party into the borough, upon the ground of good reputation—and on making a reasonable contribution to the public stock of the town. It will be seen hereafter, that this is in direct conformity with the ancient customals of the cinque ports.

The bye-laws afterwards proceed to engraft upon these simple provisions, some of modern intricacy, relative to the sons of aldermen,—which, in another part, are applied to all freemen,—and the particular rights of the *elder son*,—upon which we have observed before.

Violent conduct or language of the aldermen, or any of the "*inhabitants*," against the mayor and aldermen, whereby the king's peace, or brotherly love or affection, might be broken or impaired, was subjected to a forfeiture. Provision is also made for payment, by the freemen, of all quarterages and forfeitures incurred by them.

All the crafts and occupations within the borough, were to be divided between the mercers and iron-holders.

Freemen, and all other *inhabitants*, dwelling within the borough, except apprentices and servants, were to aid and assist the mayor, serjeants-at-mace, constables, and all other officers within the borough. Every person coming to *inhabit* within the borough, except men of known nobility and worth, was to bring a testimonial, from the place from whence he came, of his honesty and good behaviour; and give security, for the protection of the borough,—to which we have before adverted.

All persons then residing within the borough, not having

Domesday. remained there for the space of half a year, were to do the
Hertford- same.—Those not so doing, were to be compelled or driven
shire. out of the borough; and he who received them, was to pay a forfeit of 40s.—adopting precisely, the directions of the Saxon laws.

There were provisions for a general assembly of the wardens of the company, and all the freemen, four times in the year—Christmas, Easter, Midsummer, and Michaelmas—for the view and correction of the business of the companies—enrolling freemen—and payment of quarterages. Every freeman inhabiting within the borough, was directed to pay his quarterages; and there were further ordinances respecting the freemen. The constables were required to make diligent search, monthly, for every person that had come to *inhabit* within the borough, and all strangers remaining there, under a penalty. Two viewers were to be every year chosen from the inhabitants of each of the four wards, to present all encroachments to the mayor and aldermen.

It is obvious from this extract, that the viewers and mayor and aldermen, were then exercising, through the medium of the sessions, the original jurisdiction of the Court Leet,—which will be a strong confirmation of what we have before observed, that the select bodies of aldermen, capital burgesses, and assistants, were, in point of fact, derived, originally, from the grand and petty juries of the Court Leet.

The next provision related to the swearing of freemen,—another branch of the duty of the Court Leet; and establishes,—that the admission of freemen,—though so generally considered a corporate act,—is, in truth, nothing but the ancient law respecting the Leet, which can alone justify the administration of such an oath.

The next provided, that no stranger, inhabiting out of the borough, was to be made free of it, or have recourse there as a freeman, so long as he should be non-resident within it, whereby to hinder the freemen *inhabiting* within the borough, of their trade of living; except with victuals, and on fair days.

Excellent rules were made for the proper use and cus-

body of the town seal—the due entry of the names of the freemen—the binding of apprentices,—and other matters of minute detail, into which it is not necessary to enter; —the whole concluding with the form of oaths to be taken by the respective officers upon entering into office. Such is the result of the documents having relation to the municipal government of St. Alban's.

Domesday.
Hertford-
shire.

In the beginning of the last century, the parliamentary right of election became the subject of frequent discussion.

In 1700, it was insisted by the petitioner, to be in the mayor, aldermen, freemen, and such householders only as paid scot and lot. On the other hand, it was contended by the sitting member, that all householders, whether they paid scot and lot or not, were entitled to vote. The town clerk spoke to the usage for 20 years; that those who did not pay scot and lot had been allowed to poll, in order to hinder tumults; but that they were queried, and by reason of the great majority on one side it had never been contested: yet he owned the freemen had a right to vote without paying. Other evidence was given for 50 years, to show that all the householders had voted, though it appears exception had been taken to them.

1700.

It is impossible to pass on from this evidence without observing upon its unsatisfactory nature:—amounting only to slight proof of a doubtful and questionable usage, and that only for a short period. There is a difficulty in conceiving how such evidence could be adopted, respecting a right commencing in the reign of Edward I.;—more especially when it is remembered, that the payment of scot and lot was expressly required by the common law, as early as the reign of William the first; and, therefore, the evidence of this usage was admitted to negative the common law; the practice, at the best, having always been disputed. As a striking instance to establish how unsatisfactory the reception of evidence of usage is, in questions respecting the parliamentary right of election, it should be noted,—that the polling of the householders not paying scot and lot was not investigated, because the

Domesday. majority was so great as to render it unnecessary. So
Hertford- that, at all events, evidence of usage of this description
shire. should be confined to those cases only, where it was the
interest of parties to discuss the point.

In answer to this case, relied upon by the sitting member, the counsel for the petitioners most properly rested solely upon law and reason, not calling any witnesses: and contended, that by the law of the land all persons ought to pay scot and lot; and that it was reasonable—that those only who contributed to the charges of the borough should share the privileges of it.

The committee correctly decided this point in dispute between the parties, by resolving, that *such persons only who paid scot and lot had a right to vote*:—but they were misled, by neither party disputing the right of the *freemen*, to include them, as a separate body, in the right of election; and thereby committed the same error as the Hertford committee had done before, in continuing this *obsolete* distinction. The St. Alban's committee were still more mistaken in not imposing upon the freemen the necessity of paying scot and lot; which would in a great degree have neutralized the effect of the erroneous conclusion into which they were led by the specious admission of the town clerk, who, apparently willing to support the unrestrained right of the members of the corporation,—said they might vote without paying. The election was declared void.

1701. In 1701, there was a petition of several *householders* on behalf of themselves, and other freemen inhabiting within the borough, paying scot and lot, complaining, that by the permission of the mayor, aldermen and town-clerk, several foreigners were allowed to vote, contrary to the custom of the borough.

1706. In 1706, there was another petition, upon which the right was *agreed* to be as it had been decided in 1700—but who had a right to demand the freedom; and whether all admitted, were entitled to vote, were the points in question.

For the petitioner it was insisted, that all who had served seven years' apprenticeship to any freemen within the borough

—and the eldest sons of freemen, born after their fathers were free—had a right to demand admission. That such freemen, and those made free by redemption on paying 5*l.*, had alone a right to vote. For the sitting member it was insisted, that no person had a *right* to *demand* their freedom, but all were made free at the *discretion* of the corporation, and every person so made free, had a right to vote.

Domesday.
Hertford-
shire.

The petitioner called many witnesses, who seem to have been incompetent to give testimony on the point,—from their claiming themselves to vote, in the same right they were called to support. However, they stated that they had never known any honorary freemen till after King James's charter; but if any tradesman had a mind to settle in the town, and the mayor and aldermen thought it necessary and proper, it was usual to admit him upon paying 5*l.*; and they produced the bye-laws to that effect.

In answer to this, the charter of Edward VI. was produced; also that of Charles II. From both of which it was said it might be inferred, that the right of freemen was by charter; and the town-clerk said, that there had been honorary freemen before King James's grant; particularly Dr. Harris;—but it was owned that he had served in Parliament for this borough.

Upon this evidence it should be observed, that it was assumed on all sides, that the freemen admitted under King James II.'s charter (which, like others of that reign, had probably been abandoned), were not entitled to vote. It was a manifest error to suppose that freedom was first given by the charters; for we have seen that the right—or rather qualification to be a burges—sprung out of the common law.

The admission of the parliamentary representative as a freeman (and another instance of the same kind occurs in 1717) confirms the suggestion we before made, in considering the case of Hertford,* that the non-residents there were accounted for by the custom of making the members freemen.

The distinctions respecting eldest sons, and freedom by

* See before Hertford.

Domesday. redemption, were evidently taken from the bye-laws, to which
Hertford- we have before referred.
shire.

The committee resolved, that the right of election was in the mayor, aldermen, and such freemen only as have a right to freedom by birth or service, or having been made free by redemption—and in the householders paying scot and lot.

The ill effects of allowing the right to be in the freemen was verified in this place—as it has been in many others—by the tricks which were so frequently resorted to for the purpose of preventing freemen from being duly made, when they were likely to vote contrary to the wishes of the corporation. These courses necessarily led to long and expensive litigations.

The House adopted the resolution of the committee, with an amendment only, as to the right of election, which they limited to such as were so admitted, “in order to trade or inhabit within the borough.” Undoubtedly an important amendment, as tending to restrain the admission of an inordinate number of honorary freemen.

1714. In 1714, the question came again before a committee,—the petitioners insisting upon the right of election originally established in 1700; but the sitting members disputed the claim of the honorary freemen. For the petitioners, the charter of Edward VI., and the resolution of 1700, were given in evidence; and also parol testimony, that for 68 years honorary freemen had voted,—that being honorary freemen, or non-resident, was no disqualification; and reference was made to the ousting of several freemen in the Court of Queen's Bench.

For the sitting member, it was proved, that 50 freemen had been admitted on one occasion—which being complained of to Parliament, it was said the House had set them aside; and they gave in evidence the resolution of 1705; and it was urged, that all the honorary freemen had been rejected, excepting one, who had served as member for the borough.

The committee resolved, that the right was as decided in 1700, including all the freemen; and so, in fact—permitting an unrestricted number of honorary freemen to vote,

—which gives the means of indirectly out-numbering the real burgesses, or inhabitant householders.

Domesday.
Hertford-
shire.

1722.

It does not appear that the *inhabitants* were satisfied with this determination; for, in 1722, many of them who paid scot and lot, petitioned, on behalf of themselves, and the rest of the inhabitants of the same description, stating, that they were assessed for aids granted to his majesty, separately from the rest of the county of Hertford; referring to the charters of Edward VI. and Charles II., and complained, that the mayor and aldermen acted in an arbitrary manner, against the true meaning of those charters, and assumed to themselves an unlimited power of making what number of persons they pleased, freemen of the borough. And they were so much increased, that some hundred of them being foreigners, and doing no service to the borough, nor contributing to the aid assessed upon it, yet vote at all elections of members of Parliament,—and the *inhabitants* had almost lost their ancient right, being out-voted by such pretended freemen,—which was the cause of great riot and disorderly practices, and of great bribery, as most notoriously appeared at the last election; when, although a majority of the inhabitants paying scot and lot voted for two of the candidates, yet they were out-voted by the freemen.

Stronger grounds of complaint—or more decisive proof of the effects likely to be produced by the unlimited power of admitting honorary freemen, can hardly be supposed. The actual effect of that power was cogently felt in 1721 and 1743; at the former of which periods, 120,—and in the latter, 183 freemen—were admitted for election purposes, to the scandalous invasion of the rights of the real burgesses.

The reader has now seen, as well the municipal as the parliamentary history of this borough, from the time of William the Conqueror to the present period; and he will have observed, that it was a borough, returning members to Parliament, long before it was incorporated;—that when the charter of incorporation was granted, in the reign of Edward VI., *all the inhabitants*—in conformity with the general law; and in confirmation, as must be assumed,

Domesday. of the ancient usages of the borough—were incorporated
 Hertford- as the burgesses of the place. They continued, from
 shire. that time, to act and be recognised as the burgesses, in all transactions connected with the borough. It should be borne in remembrance—that no mention whatever of the *freemen* is made in the charter of Edward VI.: nor does that *obsolete* distinction occur in any document till the charter of the 8th of Charles I., and in the parliamentary proceedings—long after the real distinction had ceased to exist. It is the more striking, that it should have occurred in the parliamentary proceedings, because the writs and precepts for the elections are clear and explicit, that the election shall be *of burgesses, by the burgesses*. Constitutionally and legally speaking, there can be no possible pretence for allowing the *freemen* to participate in the parliamentary elections.

The *municipal* history therefore of the borough, is most distinct, and free from doubt,—and shows the *burgesses* to be the *inhabitant householders, paying scot and lot*. The only difficulties which have been introduced, are where the rights of the *burgesses* have been wilfully perverted and thrown into doubt, for the purpose of supporting *political* and *parliamentary* interest; for which there is the less excuse or pretence, because the parliamentary elections ought clearly to have been by the "*burgesses*."

BUCKINGHAMSHIRE.

BUCKINGHAM.

Fol. 143. Preceding the summary of this county, there is the entry of Buckingham,—which states, that it defended itself, in the time of King Edward, for one hide, and now does the same. It speaks of the lands and villains in demesne; and adds, that there are 26 burgesses, and mentions the coroner of the town.

In this *borough*, the Bishop of Constantine^m has three *burgesses*, whom Wluuard, the son of Eddeva, held. 1

Hugo, the earl, has one burgess, who was the man of ^{Domesday.}
Burcardi de Senelai.

Robert de Olgi has one burgess, who was the man of Azor,
the son of Toti.

Rogeri de Juri has four burgesses, who were the men of
the same Azor.

Hugo de Bolebec has four burgesses, who were the men
of Alrici.

Manno Brito has four burgesses, who were the men of
Eddeve, the wife of Syred.

Hascoius Musart has one burgess, who was the man of
Azor, the son of Toti.

Ernulf de Hesding has one burgess, who was Wilaf's.

William de Castellon has two burgesses of the fee of the
Bishop of Baieux, who were the men of Earl Lewin.

One burgess of the fee of Earl Alberici.

Lewin de Neuueham has five burgesses, and had them in
the time of King Edward.

No other boroughs are mentioned in this county.

WENDOVER.

Wendover is entered amongst the lands of the king, and
as such is ancient demesne; but no burgesses occur, nor is
there any thing peculiar in the entry. Although it will be
observed hereafter, that Camden says, on the authority of
an old inquisition, that it was a borough at this time.

WYCOMBE.

Wycumbe is stated to be held by Walchelinus, bishop of
Winchester. It is merely called a manor, not a borough—
nor are any burgesses mentioned; neither is there any thing
peculiar in this entry. Being held by the church, may per-
haps account for its not then being a borough.

AYLESBURY.

Aylesbury is not mentioned as a town, borough, or manor
—only as a hundred.

Neither Marlow nor Agmondesham are mentioned.

Domesday. In the survey of the town of Riseberge, which is entered
Buckinghamshire. amongst the lands of the king, and is therefore ancient demesne; it is stated, that in this manor there lies, and has
Fol. 143, B. laid, a certain burgess of Oxford, paying 2s.

This survey establishes that Buckingham was a *borough* at this time; and that there were 26 burgesses, as stated in the survey, although there is a subsequent enumeration of them, which amounts to 27—the first probably being erroneously entered for that number, by the omission of an unit.

The burgesses are described as being there (*ibi*), which of itself raises an inference that they actually resided in the place.

The enumeration of the burgesses seems also to confirm this inference; and together they may lead us to the conclusion, that, although not expressly so described, they were in fact the inhabitant householders, occupying the houses they had under the persons mentioned; and as it appears they were not freeholders, they must have been burgesses, by residence or some personal right, and not by tenure—which is confirmed by the entry of the Oxford burgess, who held of the manor of Riseberge, and was probably resident at Oxford—by virtue of which residence he was a burgess of that place, though he held of the manor of Riseberge. Had the word *manet* been used instead of *jacet*, the inference might have been the other way, that the person lived at Riseberge:—but the word “*jacet*” seems peculiarly applicable to the land held by the tenant, and not applying to the tenant himself; and this inference is placed beyond doubt, by the subsequent entry of Oxford, where the *mansion* itself is entered, and not the burgess;—and though there might be a question as to his real residence, there can be none as to the situation of the house, which is described as in Oxford; therefore that entry, and others of a similar description in Oxford, are conclusive on this point, that the burgesses of the different boroughs, who are entered under the several manors, are in fact resident in the boroughs, in houses *there* held of the manors under which they are entered.

Fol. 154.

OXFORDSHIRE.

OXFORD.

In Oxfordshire, there were three parliamentary boroughs, besides the University,—Oxford, Woodstock, Banbury;—of these, the former alone is mentioned in Domesday. The University of course, is not spoken of, because it did not exist as a separate jurisdiction, till after the survey.

The entry for Oxford precedes the return for the county, and is as follows:—

OXFORD.

In the time of King Edward, Oxeneford rendered for toll and gable, and all other customs, by the year, to the king, a certain 20*l.*, and six sextaries of honey; and to the Earl Algar 10*l.*, the mill being joined which he had within the city. When the king went on an expedition, 20 *burgesses* went with him for all the others; and they gave 20*l.* to the king, that all might be free. Fol. 154.

Now Oxeneford renders 60*l.* in tale of 20 in the ore. In the town itself, *as well within the wall as without*, 243 houses render geld; and besides these, there are 500 houses, 22 less, so wasted and destroyed, that they cannot render geld.

The king hath 20 *mural mansions*, which were of Earl Algar in the time of King Edward;—he hath one *mansion belonging to Sciptone, and another belonging to Blochesham; and a third to Riseberge, and two others belonging to Tuiford* in Buckinghamshire—one of these is waste.* They are called mural mansions because, if need be, and the king command, they repair the wall.

To the land which Earl Albericus held, belong one church and three mansions;—of these, two belong to the church of St. Mary.

Then follows a list of the manors, and the names of

* See bef. Buckinghamshire, fol. 143, B.

Domesday. the ecclesiastical and lay proprietors, who are stated to hold
Oxford- 247 mansions; of which 102 were waste. Of the foregoing,
shire. 187 are described as free for the reparation of the walls. Thirteen houses are likewise mentioned, of which two were waste.

The Abbot of St. Edward had one mansion, *belonging to Tentone*. All the mansions which were called mural, in the time of King Edward, were free from all custom, except expedition and the repair of the wall. Alwin had one house free for repairing the wall. And if the wall, while there be need, is, by him who ought to do it, not repaired, he shall either make amends of 40*s.* to the king, or lose his house.

And all the burgesses of Oxford had, in common, without the wall, pasture rendering 6*s.* 8*d.*

Fol. 164, There is afterwards an entry amongst the king's lands, of
 B. the customs of the county of Oxford, as follows:—

The county of Oxeneford renders the farm of three nights;— this is 150*l.* of increase, 25*l.* weighed; of the borough, 20*l.* weighed.

If any one shall break the king's peace, given with his hand and seal, so that he kill a man to whom the same peace shall be given, his limbs and life shall be in the judgment of the king, if he shall be taken;* and if he cannot be taken, he shall be accounted an *exile* by all; and if any one shall be able to kill him, he shall have his spoil freely.†

And if any *stranger shall like to dwell in Oxford*, and having a *house*, shall die without relations, the king shall have whatever he shall have left.

If any one shall violently break and enter the court or house of any one, that he may kill or wound and assault a man, let him make 100*s.* amends to the king.‡

Also he who being summoned to go on an expedition, goeth not, shall give 100*s.* to the king.§

If any man shall slay another between the court and his house, his body and all his substance are in the power of the king, except his wife's dower, if she be endowed.

* So the Saxon Laws.

† See also post. Hereford, where a law somewhat similar is applied to a *burgess*.

‡ Sax. Ll.

§ Ll. Sax.

Robert de Oilgi hath 42 *inhabited houses* in Oxford, *as well within the wall as without*. Of these, 16 render geld and gable; others render neither, because *on account of poverty* they are not able. He hath eight waste mansions, and 30 acres of meadow *near the wall*, and a mill of 10s. The whole is worth 3*l.*, and is holden for one manor with the benefice of St. Peter.

Domesday.
Oxford-
shire.
Fol. 158.

Much of this return corresponds with those which have occurred before, and therefore lengthened remarks are not necessary upon it.

It should, however, be observed, that in this instance, as well as in many that have previously appeared, there are houses and lands belonging to the borough, as well within the walls as without; and the many houses belonging to *other manors*, which are entered in this place, are again decisive to show, that the burgesses in other manors, were entered, *in respect of the tenure of their houses; though they were burgesses of the borough, in respect of their residence and occupation.*

The customs of the county of Oxford, have been inserted, with a view of showing their immediate connection with the Saxon laws; and the provision for a *stranger* coming to dwell in Oxford, and having a house there, will be found confirmatory of the obligation, to which we have before alluded, of every new-comer who was a householder, being entitled and bound to take upon himself, all the liberties and burdens of the place. And we have another proof, that others who were suffering under poverty, were excused from all the burdens, both of the state and borough: it being a reasonable and necessary consequence, that they were excluded from all privileges,—of which the still existing general disqualification by receipt of alms, is the modern confirmation.

Domesday.

GLOUCESTERSHIRE.

GLOUCESTER,

TEWKESBURY.

In Gloucestershire, there were three parliamentary boroughs—Gloucester, Cirencester, and Tewkesbury;—of these, two only are referred to as boroughs in Domesday, namely, Gloucester and Tewkesbury.

TEWKESBURY.

Fol. 163, B. This place occurs only once, where it is described as having 13 burgesses and a market.

GLOUCESTER.

Fol. 162. Of Gloucester there is a considerable entry, and frequent mention of the burgesses in several manors. It appears that it was a city in the time of King Edward; and provided certain supplies for the king's ships, his hall, and chamber. The other parts of the entry resemble many that have occurred before, and contain an enumeration of the owners, ecclesiastical as well as lay, of three houses and 20 mansions. Ten houses are stated to be wanting where the castle is; 14 are described as waste.

One other house is also entered, in another manor; and 62 burgesses in Gloucester are mentioned under different manors—besides the burgesses of St. Peter—the number of whom is not stated.

In this entry there appears nothing material for observation;—but it may be somewhat further illustrated by a document to which the learned research of Sir Henry Ellis* has drawn our attention. It is an extract from the Cottonian Register of Evesham Abbey, containing returns, which are probably originals, made by the commissioners who formed the Domesday survey.

* Sir Hen. Ellis, Domesday, ii. 445, n.3. Cott. Reg. Evesham Abbey. Vespas. B. 24. fol. 53 and 55.

It appears from them, that there were 612 burgesses, ^{Domesday.} though in Domesday itself, only 62 are mentioned:— ^{Gloucester-} ^{shire.} which confirms the observation we have before made, that we must not look into this survey for ample statements as to the burgesses, nor be disappointed if we do not find them;—neither assume that there were none, because none are mentioned—for this document was compiled, not for the purpose of giving an account of the burgesses, but of the king's revenue.

The material part of the extract is as follows :

In the time of King Edward, there were, in the city of Gloucester, 300 burgesses, in demesne, rendering 18*l.* and 10*s.* of gable annually. From these there are 100, three less, *resident on their own hereditary property*; and 100, three less, dwelling in purchased mansions, of French and English, which are worth 10*l.* per annum; and they hold them for 12 years. Within the castle, there remain of these 300, 24; and 82 mansions are waste.

After which follows an enumeration of the persons ecclesiastical and lay, having a number of burgesses, who must be persons residing in houses held of these individuals, amounting altogether to 312. And upon all these the king hath sac and soc; and 10 churches are properly in the king's soc.

This document affords us a fact which the survey does not expressly communicate;—that many of the burgesses resided in the houses they possessed:—amounting altogether to 194. The 312 other burgesses appear to have lived in houses rented of several lords. In this extract, therefore, we have a most distinct refutation of the doctrine, that burgess-ship depended upon ancient demesne or tenure: for we have here persons holding in every different way—some of the king, though hereditary property—some of him, though purchased property—and some merely rented of other lords—and yet they are all burgesses. And as the only point in which they are similarly circumstanced is—that they are all inhabitant householders,

Domesday. resident within the borough—it seems impossible to
 Gloucester- doubt, that circumstance was the ground of their being bur-
 shire. gesses.

Before we quit this extract, we ought however to observe, that, contrary to the doctrine which we have before maintained,—that the castles were generally separate from the boroughs,—we find it is here stated, that 24 of the king's burgesses dwelt within the castle. If this were the fact, it was an exception to the rule for which we have before contended; but it is worthy of note, that this circumstance is not adverted to in the survey; on the contrary, it is there stated, that "10 houses are now wanting where the castle is," which seems rather to raise the inference, that the castle was not within the borough.

WORCESTERSHIRE.

WORCESTER,

DROITWICH.

In Worcestershire there were four parliamentary boroughs
 Fol. 172. —Worcester, Evesham, Bewdley, Droitwich—of which only Worcester, and Droitwich, under the name of *Wich*, are mentioned as boroughs.

The survey of this county affords but little information upon the subject of our present inquiry.

WORCESTER.

The separate entry of the *city* of Worcester, like many other cities and boroughs, precedes that of the county: but there is no mention of the burgesses in it, nor does any thing illustrative of their situation appear.

The geld of the county, and the census of the houses are mentioned. The entry then proceeds,—which probably must be referred to the county at large, and not to the city alone,—the king holds it in demesne, part his own, and part belonging to the earl.

The profits of the pleas of the county and of the hundreds are returned, Domesday.
Worcester-
shire.

There are 12 hundreds mentioned in the county; seven are so free that the sheriff has nothing in them, and therefore he says, he loses much in his *firm*. From which it appears—that the freedom was from the payment of the *firm*, to which the counties at large, as well as the boroughs, were subject; and yet charters, granting boroughs at *fee-farm*, have been considered as charters of incorporation. But although these seven hundreds enjoyed this exemption, it can scarcely be contended, that they were incorporated.

Forfeitures for several offences in the county, particularly breach of the peace,—in conformity with the Saxon Laws,—are mentioned; as well as penalties for not following the king to the war.

Although Worcester is not in this part of the survey spoken of as a borough, nor are any of its burgesses mentioned, in a subsequent folio it is expressly described as a *borough*, amongst the lands of the Bishop of Worcester. Fol. 173, B. But to mark the imperfection and irregularity of the returns on these points, *Wich** is mentioned in the same place, but not as a borough, although its burgesses are subsequently named. Thus, the church of St. Dyonisius is stated as holding one Fol. 174. hide in *Wich*; and there are *there* (that is in *Wich*) 18 burgesses. The church of Coventry has also a hide in *Wich*, which Urso holds, and has four burgesses. Amongst the lands of the church of St. Peter, Westminster, in *Wich*, 31 burgesses, rendering 15*s.* 8*d.* are returned. Fol. 176. And in another part, nine burgesses belonging to St. Guthlac; and Roger Fol. 176, B. de Laci had one hide in *Wich*, where were eleven burgesses. Osborn, the son of Richard, had 13 burgesses in *Wich*, who served at his court:—marking the difference between such service at a court baron, which they owed to the manor in respect of their tenure; and suit royal, which they owed in the borough, at the court leet, in respect of their *resiancy*;—by virtue of which they were burgesses.

* *Wich*, now *Droitwich*.

Domesday. Harold, the son of Radulph the earl, had one hide in Wich, and 20 burgesses. Urson de Abetot also had seven

Worcester-shire. burgesses in Wich:—making altogether the number of 105 burgesses *living in Wich*:—as appears clearly from the words of these several entries.

Fol. 177.

Fol. 175, B. As to Worcester, although many houses occur—25 in one place—28 in another—90 in another—and two or three other houses in different entries, as well as some manses—still there are, as compared with Wich, very few burgesses mentioned.

Fol. 176, 177, B. Ralph de Toderi has two; William, the son of Corbucion, one; Urson de Abetot, one; and Hugo Lasne, two: making altogether, only six burgesses for this city;—a circumstance certainly worthy of remark; but probably to be accounted for, either in the manner we have suggested as to Gloucester; or by the destruction of the city by Hardicanute, in 1039, about 40 years before, when the inhabitants fled, and their possessions having probably been seized by him, were not at the time of the survey, in the hands of persons who, as freemen, could be burgesses.

Fol. 173, B. Urso is stated to hold of the bishop, 25 houses in the market: but no burgesses are mentioned.

There are in this county, as in others, many places described as having sac and soc, though not boroughs. "Liberi homines" frequently occur; and also that class of tenants who could transfer themselves and their lands whither they liked; which is conclusive, that tenure and residence were not necessarily connected. The firm and geld of lands and places not within the borough, are also often described. The castle of Dudelei is spoken of, but it does not appear to be a borough; another instance to negative the assertion of Brady,—that boroughs had their origin in castles.

The peculiarities in the survey of this county, are—first, the quantity of land which is returned free from geld:—secondly, that in Wich, half a hide is said to belong to the hall at Gloucester:—thirdly, a manor is stated to be held for three lives:—fourthly, a parol will is mentioned:—and from one entry it appears, that the shire courts were held before the bishop, and the other barons of the king.

Fol. 172, B.

Domesday.

Worcester-
shire.

BEWDLEY.—EVESHAM.

Bewdley is not mentioned in this return. Evesham was held freely by the church of Evesham:—it is not called a borough; and the residents there are described by the term "*manentium*"—not as burgesses.

The only material part of the entry as to that place, is as follows:—

In Evesham, where the abbey is situated, there are, and Fol. 175, B. always were, three hides of free land. Some are in demesne, and the bordarii do service to the abbey court. A mill, and the cense of the man there residing, is stated to be 20*s*.

That neither the borough nor burgesses are spoken of, is readily explained, considering that the place was the possession of the church;—tenants of ancient ecclesiastical property not being subject to the temporal, but to the ecclesiastical law; the bordarii, therefore, who are here mentioned as owing service to the abbey, would not owe suit to the sheriff's court or tourn, and consequently had no reason to seek an exemption from his jurisdiction, by obtaining, like other places, the grant of being a free borough; there is, therefore, every reason for inferring,—that Evesham was not at that time a borough.

As confirmatory of the exemption of ecclesiastical property from the jurisdiction of the sheriff, we shall note a passage in the entry of the land belonging to the church at Worcester:— Fol. 172, B. which states, that the church of Saint Mary had one hundred, called Oswaldeslav; in which there lie 300 hides, of which the bishop of that church, from the constitution of ancient times, has the profits of all pleas and customs belonging to the demesne, and the table and service of the king, and his own; so that *no sheriff can hold there any plaint, neither in any plea, nor in any cause whatever.*

Other particulars are subjoined, but the above will suffice to establish the point we have suggested.

Domesday.

HEREFORDSHIRE.

HEREFORD.

There were in Herefordshire, three parliamentary boroughs—Hereford,—Leominster,—and Weobley. The first is the only one mentioned in Domesday as a borough; and of that, the entry, like many of the considerable cities and boroughs, precedes the return of the county. As it specifies the customs of the city with much particularity, it is desirable to insert it.

HEREFORD.

Fol. 179. In the city of Hereford, in the time of King Edward, there were 103 men *dwelling* together, within and without the wall; and they had these under-written customs:—If any one of them wished to *depart* from the city, he was able, by grant of the *reeve*, to sell his house to another man *willing to do the due service* thereof; and the reeve had the third penny of this sale. If any by his *poverty* was not able to do service, he relinquished without price his house to the reeve, who provided, that the house should not remain empty, and that the king should not want his service. Within the wall of the city, every entire masura rendered $7\frac{1}{2}d.$ and $4d.$ for the hire of horses; and four days in August, he mowed at Maudine; and one day to collect the hay when the sheriff willed. He who had a horse, went three times in the year with the sheriff, to the *Pleas* and *Hundred Courts* at Urmelavia. When the king appointed to go to hunt, *one man from every house* went by custom to the stand in the wood.

Other men not having entire masuræ, found attendants for the king at the hall, when the king was in the city.

A *burgess* serving with a horse, when he died, the king had his horse and arms. Of him who had not a horse, when he died, the king had 10s., or his land with his houses.*

* See also bef. Oxford.

If any one prevented by death, did not demise the things which were his, the king had all his money. These customs had the *inhabitants* in the city, and others likewise *dwelling* without the wall; except only that an entire masura without the wall, gave only 3½*d.* Other customs were common.—Whatever man's wife brewed within and without the city, gave 10*d.* by custom. Six smiths were in the city, each rendering 1*d.* for his forge, and making 120 nails of the king's iron; and 3*d.* were given to each of them by custom; and these smiths were quit from all other custom. There were seven moneyers;—one of these was the moneyer of the bishop:—when money was renewed, each gave 18*s.* for receiving the coinage die; and from that day, when they rendered them for one month, each gave to the king, 20*s.*; and likewise the bishop had of his moneyer, 20*s.* When the king came into the city, as much money as he willed, the moneyers made for him, to wit, of the king's silver; and these *seven* had their *sac and soc*.* When any moneyer of the king died, the king had 20*s.* for relief; but if he died without devising his effects, the king had them all. If the sheriff should go into Wales with an army, these men went with him. If any one who was ordered to go, went not, he made amends of 40*s.* to the king. In this city, *Earl Harold* had 27 *burgesses*, having the same customs as other *burgesses*. Of this city, the *reeve* rendered 12*l.* to King Edward, and 6*l.* to Earl Harold; and he had in his cense all the abovesaid customs. But the king had in his demesne three forfeitures, that is,—breach of peace,—hinefare,—and forestalling.† Whoever did one of these, made 100*s.* amends to the king, *whosoever man he was*.

Now the king hath the city of Hereford in demesne; and the *English burgesses dwelling there*, have their own customs; but the *French burgesses* have all their forfeitures quit for 12*d.*, except the three aforesaid. This city rendered to the king, 60*l.* in tale of white money. Between the city and 18 *manors* which render their *firms* in Hereford, are accounted 335*l.* 18*s.* *except the pleas of the hundred and county courts*.

* Vide *soc et sac*, post. Huntingdon, p. 216.

† *Ll. Sax.*

Domesday. From the context of this entry, it is clear, that the 103
Hereford- men, who were *dwelling* in Hereford in the time of King
shire. Edward, were the burgesses; and that the liberties extended as well within, as without the walls. Considering also the method which is described, of a person's quitting the city and selling his house, with the consent of the king's officer—the reeve,—provided he could procure another person to do the due service of his house; it is obvious,—that if burgeship in any borough depended upon tenure, it would be in this, where the possession of the house and the services, were so directly connected. Yet there is no trace of any burgage right having existed in this place; but all the municipal and parliamentary privileges appear to have been exercised by the freemen; and it returned members from the earliest times.

The disqualification by poverty also occurs in this case.

The king being entitled to the horse and arms of a person who died,—here applied to a burges, —will probably satisfy the reader, that the passage occurring before in the entry of Oxford, was also intended to be applied in the same manner.

In this entry the *inhabitants* of the city are expressly spoken of; it being the first, and it is believed, the only time the term occurs in the survey.

The Saxon laws are also obviously referred to in this return. The distinction between the French and English burgesses appears strongly to prove,—that all persons *dwelling* within the borough, whether natives or strangers, were, under certain conditions, entitled to be burgesses.

The farms of other manors, as well as that of the city, are mentioned:—which is decisive to establish, that the holding at fee farm was not the peculiar characteristic of a borough:—nor was it an indication of a corporation.

In the entry of the manor of Merchelai, four burgesses at Hereford, are stated to *render to that manor* eighteen ploughshares; distinctly confirming, by the new feature of rendering rent to the manor, the fact we have so often insisted upon, of the burgesses, though resident in the borough, holding of distant manors.

CAMBRIDGESHIRE.

CAMBRIDGE TOWN.

There is in Cambridgeshire only the Borough of Cambridge, and the University, which of course is not mentioned in the survey, as its separate jurisdiction was of subsequent creation. The entry of Cambridge precedes that of the county. The only material parts of it are as follow:—

GRENTEBRIGE.

The Borough of Grentebrige defended itself for an hundred in the time of King Edward. Fol. 189.

In this borough were and are 10 *wards*.

In the first ward are 54 *masuræ*; of these two are waste. In this ward Earl Alan hath five *burgesses* rendering nothing. Earl Morton, of the land of Judichel, hath three *masuræ*, and there are three *burgesses*. Roger, the man of the Bishop of Remigius, three *burgesses*. Eschanger hath one *burgess*. This same ward was accounted for two in the time of King Edward; but 27 *houses are destroyed for the castle*.

In the second ward were 48 *masuræ* in the time of King Edward; of these two are waste. Of these *masuræ* Earl Alan hath 5 *burgesses*.

In the third ward, in the time of King Edward, there were 41 *masuræ*; of these 11 were waste.

In the fourth ward, in the time of King Edward, there were 45 *masuræ*; of these 24 are waste.

In the fifth ward, in the time of King Edward, there were 50 *masuræ*; one of these is waste.

(The sixth ward seems to be omitted.)

And in the seventh, in the time of King Edward, there were 37 *masuræ*.

In the eighth ward, in the time of King Edward, there were 37 *masuræ*.

In the ninth, in the time of King Edward, there were 32 *masuræ*; of these three are waste.

Domesday. In the tenth, in the time of King Edward, there were 29
 Cambridge-
 shire. masuræ; of these there are six waste.

Of the customs of this town 7*l.* by the year; and of Langable 7*l.*

The *burgesses* in the time of King Edward lent their ploughs to the sheriff three days in the year: now they are required nine times. They found neither cattle nor ploughs in the time of King Edward, which now they do by custom imposed. But they reclaim from Picot, the sheriff, common of pasture, taken away by him from them.

From this entry it appears that Cambridge, like many ancient towns, was divided into wards; and the residences seem to be described by the term *masuræ*, with which the *burgesses* are expressly connected:—because 48 *masuræ* are mentioned in the second ward; and it is added, of these Earl Alan hath five *burgesses*.

HUNTINGDONSHIRE.

HUNTINGDON.

In this county there was, at the time of the survey, only one Borough, namely, Huntingdon; which is at present also the only place returning members in Huntingdonshire.

Fol. 203. The entry as to this borough mentions 116 *burgesses* in two *ferlings*, who pay all customs and the king's *geld*; and there are under them 100 *bordarii*, who help them in paying the *geld*. Many of these *burgesses* are stated to belong to different lords, by reason of their tenures in other places:—their *burgess*-ship depending on their residence. Some of them belonged to lords who had *sac* and *soc*.* But it is clear, from the contents of the survey, that those privileges alone did not make a borough, because there are many places in this county, as in Herefordshire, where they existed, which, nevertheless, were not boroughs.

There are some mansions entered without any notice of

* *Soc* and *sac*;—see before, Hereford, p. 213.

the burgesses:—many were destroyed when the castle was built, and others were waste; of course there could be no burgesses in respect of them. But that burgesses had their privileges on account of their residence, and their houses, is directly shown by a subsequent part of this entry, which speaks of 22 *burgesses, with their* houses, as belonging to the church.

Domesday.

Hunting-
donshire.

It appears that the borough was held at firm:—which fact, however, did not give it that character, because, numerous places will be instanced as held at ferm that were not boroughs; and on the other hand, boroughs may be found which were not held at fee-farm.

The same observation may be made as to the geld;—in the entry said to be paid to the king;—but other lands have been before mentioned, and there were many in this county held at geld, although they were not situated in any borough.

It appears from two or three passages in the survey of Huntingdonshire, that the return for the county was made by the men of the hundred; but that for the borough of Huntingdon, (as might be expected, if the suggestion that the boroughs had a jurisdiction separate from the hundreds of the county, and exempt from the power of the sheriff, is accurate) by the men of that place; as it is expressly stated, *the men who swore in Huntingdon, (homines qui juraverunt in Huntedune,)* say, that the church of St. Mary of the borough belonged to the church of Torny. Afterwards the men of the county (*homines de comitatu*) testify as to some lands not in the borough. The same distinction seems to be marked as to the payment of the geld:—that of the borough being entered as described before, in the return for the borough; and in another part, the lands respecting which the men of the county testify, are stated to geld in the hundred.

As a matter of curiosity rather than of importance, it may be observed, that this entry closes with a distinction taken by those who made the return, between the facts which they knew of their own knowledge,—and what they had only

Domesday. heard—"Hoc dixerunt se audisse, sed non vidisse; neque
Hunting- "interfuisse"—an earlier exclusion of hearsay evidence than
donshire. is perhaps generally known to exist.

BEDFORDSHIRE.

BEDFORD.

In this county there is only one borough—viz. Bedford :—which is not described as such, but is entered separately before the king's lands: frequent mention is made of the burgesses; and their lands are specially specified.

The entry is as follows :

BEDFORD.

Fol. 209. In the time of King Edward, it defended itself for half a hundred,—and now it does so, for land expeditions and in ships. The land in this town was never hidid,—nor is it now :—except one hide, which belonged to the church of St. Paul, in alms, in the time of King Edward; and now it rightly belongs; but Remigius, the bishop, took it out of the alms of the church of St. Paul—unjustly, as the *men say*—and now holds it, and whatever belongs to it.

After the Terra Regis and the lands of other persons, the 56th entry contains the lands of the *burgesses* of Bedford, amongst which occur the following :—

Fol. 218. In the same vill, (Bideham,) Godwin, a *burgess* of the king, holds one hide. Half a hide of this land, he who now holds it, held in the time of King Edward, which he *was able to give to whom he willed*—but half a hide, and the fourth part of one yardland, he bought after King William came into England; he hath done service therefore, neither to the king nor to any one, nor hath he had livery of it. William Speck reclaims, against the same man, one yardland, and the fourth part of one yardland, which was delivered to him, and afterwards he lost it.

In the same vill, Ordui, a *burgess* of the king, holds one

hide, and three parts of half a hide, &c. Half a hide, and the fourth part of one yardland of this land, the same who now holds, held in the time of King Edward, and *was able to give it to whom he pleased*—but he held one yardland *in pledge* in the time of King Edward, and still holds it, as the men of this hundred testify. The same bought, one yardland, and the fourth part of one yardland, after King William came into England—and renders service neither to the king nor to any one.

Domesday.
Bedford-
shire.

In the same vill, Ulmarus, a *burgess of the king*, holds two parts of one yardland, &c.; he held it in the time of King Edward, and could give it to whom he pleased.

These entries relative to Bedford,—like those of Hereford,—would seem to support the doctrines of burgess-ship, depending upon ancient demesne, or burgage tenure, more than any which have before occurred:—yet there are no traces of any burgage tenure rights having been exercised in the borough—but, on the contrary, the municipal and parliamentary privileges have always been exercised by the freemen, and their right has been confirmed by committees of the House of Commons;—notwithstanding Bedford has returned members from the earliest period.

NORTHAMPTONSHIRE AND LEICESTERSHIRE.

NORTHAMPTON AND LEICESTER.

In the county of Northampton one place only is entered as a borough.

Peterborough is described as a vill, amongst the possessions of the Abbot of St. Peter, and is stated to be called “burg”—no further reference is made to it as a borough; nor to its burgesses.

NORTHAMPTON.

Of Northampton there is a long entry, stating, that in the

Domesday. time of King Edward, in the demesne of the king, there
 Northamp- were 60 *burgesses*, *having so many mansions*.
 tonshire
 and
 Leicester-
 shire.
 Fol. 219.

So, that in this case, we have the *burgesses* expressly connected with their mansions.

Fourteen are said to be waste, leaving a residue of 46: and in the new borough, 40 *burgesses*, in the demesne of King William—and it may be fairly assumed, that they, like the others, had their mansions.

From these entries we may justly infer, that *the burgesses of Northampton were anciently householders*.

Besides these, there are stated to be 230 houses, the owners of which, ecclesiastical as well as lay, are enumerated; 23 of them are described as waste. Of nine out of 37 of them, which Earl Morton had, the king hath the soc; and Baldwin has half a mansion waste.

No *burgesses* are mentioned, with respect to any of these houses; we may therefore infer, that they either were in the occupation of aliens—religious persons—females—or persons who, on account of their poverty, were not able to contribute to the charges of the borough, and therefore—were not entitled to the benefits of it.

The *burgesses* are stated to pay their farm to the sheriff:—a circumstance confirmatory of a point to which we shall hereafter have occasion to draw attention—viz. that although the boroughs were, for some purposes, (particularly with respect to their service at the tourn,) exempted from the jurisdiction of the sheriff, they were not altogether free from his interference; especially as to the fee-farm—frequent instances of which, we shall hereafter find in the pipe rolls of King Stephen.

This is all which is material in the return of Northampton, or of the county. As however this entry so distinctly establishes, that the *burgesses* of Northampton were householders; it may be useful here to trace the history of this place through its further stages:—and as it is, at least upon one occasion, connected with the history of Leicester, it may be desirable to insert the entry of that place from Domesday, and consider the history of the two together.

Domesday.

LEICESTER.

Northamp-
tonshire
and
Leicester-
shire.

The return for Leicester, like Northampton, is separate from the county, and precedes the Terra Regis.

Leicester in the commencement is described as a city—for which there appears to be no warrant, there being no trace of its having had a bishop, or being particularly under ecclesiastical jurisdiction.—Unless indeed it derived that title from the abbey;—or unless the reference to a place called the Bishop's Fee,* in the charter of the 41st of Queen Elizabeth, may serve to explain the use of this term. However, in a subsequent passage of the same entry, it is called a *borough*. Fol. 230.

The rent, in the time of King Edward, is mentioned. And when the king went out with his army by land, 12 burgesses of the borough went with him—but if he went against the enemy by sea, they sent to him four horses from the same borough, as far as London, to carry arms, or other things of which there was need.

The rent which King William had of the city and county, is also referred to—being another instance of the union of the two, as far as related to the fee-farm rent.

The houses of the king—of the archbishop, (who had two, with soc and sac,)—as well as those of many of the proprietors, ecclesiastical and lay—amounting to 71, are enumerated; of all which the king is said to have the geld. Besides these, Hugh de Grentemaisnial is stated to have 110 houses, and 24 others in common with the king, in the same borough. These excepted, the same Hugh hath in Leicester, 24 *burgesses* belonging to Hanstigie; and 13 *burgesses* belonging to Siglesbie; and 63 houses belonging to different manors; besides five other houses, with soc and sac. Robert de Veci hath nine houses, with soc and sac. Many other houses in the borough of Leicester are also mentioned as held of different manors—from which no question can arise that such was the course of tenure at that time:—but that it did not interfere with burgess-ship. This is further confirmed by

Domesday entries of burgesses in the city as appertaining to other
 Northamp- manors :—and lands without the borough are *è converso* stated
 tonshire and to belong to the borough.
 and
 Leicester-
 shire.

Fol. 231,
 235.

In pursuing the histories of these places, which are sufficiently identified, in the earliest periods, by the entries in 1200. Domesday, we meet upon the charter roll, in the first year of King John, with a charter to the burgesses of *Northampton*,* granting that none of them should plead out of their walls—that they should not be adjudged of ameracements of money, but as the citizens of London in the time of Edward I.—with freedom from murder—duel—meskining—toll—scotale—custom, &c. That no persons should take any lodging there by force :—with other privileges, usual in the charters of that time; and granting all the liberties and free customs which the citizens of London had. The fee-farm was fixed at 125*l.*; and there was a special provision, that the burgesses might yearly make whom they thought fit, of themselves, and who might be proper for them and the king, to be “reeve,” in the following manner :—the burgesses, by the *common council of the town*, to elect two of the lawful and most discreet of the town, and present them to the sheriff of Northamptonshire, that the sheriff might present one of them as reeve to the chief justices at Westminster, where he ought to render his account: which reeve should well and faithfully keep the bailiwick (*preposituram*) of the town of Northampton—and that he should not be removed as long as he conducted himself well in his bailiwick, except *by the common council of the town*. Also, that in the same borough, *by the common council of the town*, should be elected four of the lawful and more discreet men of the borough, to keep the pleas and other things which belong to the crown; and to see that the reeve should justly and lawfully deal with the poor, as well as the rich.

Fol. 104, B. In the same year, there is a charter to Robert, Earl of *Leicester*, by the same king,† which granted exemption from

* Rot. Car., p. 2.

† Harl. MS. 84.

suits of shires and hundreds, and aid to the sheriff, whether taken by hides of lands or ploughs, (the mode of calculation prevalent throughout the whole of the Domesday survey,) and of money given for murder or theft, and pence belonging to free-pledge, (that is, the *essoign pennies*, paid to excuse the attendance at the *tourn* or *leet*,) with the usual grant of them—*infangthef*—*sac* and *soc*—and *quittance* of *pontage*—*passage*—*toll*, &c.

Domesday.
Northamp-
tonshire
and
Leicester-
shire.

This charter is in perfect unison with the Saxon Laws, and the usages and customs apparent in Domesday. From its context, it could clearly not have been intended to apply to the earl individually; but for the benefit of his men and tenants, including (amongst others) the *burgesses* of *Leicester*.

It appears that the *burgesses* obtained a further grant from the crown, in the same year, of important privileges, probably for the purpose of securing themselves from any claim by the earl; as the charter provided, that all purchases and sales of their lands in the town of *Leicester*, made in the *port-man mote*, should be valid;—that being the *folc-mote* or meeting of the men of the town, which, in the Saxon, is called "*Port*."

A charter was also granted upon the same day to the *burgesses*, that they might freely traffick throughout the king's dominions with all their merchandises.

These charters only detail and confirm the privileges which the *burgesses* of both these places had before enjoyed; but at the commencement of each reign, the king usually received a fine for the recognition of their former privileges, and it gradually became a practice, in every succeeding reign, to detail them, with increased particularity: for, as the sheriff was wont to insist upon all his rights and jurisdiction not expressly excluded by the words of the charter;—so also the *burgesses* from time to time procured provisions to be inserted in the grant to them excluding his claims. Hence from the very brief charters of the reign of Henry II., the subsequent grants increased to the enormous length of those of the Tudors and Stuarts; some

Domesday. effectually excluding the sheriff, by making the places
Northamp- counties of themselves.
tonshire

and
Leicester-
shire.

In *Northampton* it appears that there had not been any reeve, before the charter granted by King John:—which explains the passage in Domesday, stating that the fee-farm of the borough was paid to the sheriff of the county:—and therefore the charter to that place provides for the election of a reeve—and four persons to keep the pleas of the crown. Both of these elections are directed to be made by “common council” of the town. These words might be supposed to be used in the sense in which they are ordinarily taken in modern times, viz. to describe the body who form the common council of a corporation. But in truth, they are here used to express the common consent of the town:—an application of the term occurring in the Saxon laws,* and in many documents of this and the immediately succeeding periods; long before the bodies of common councilmen were in general use. We shall find a common council created in Northampton 200 years subsequent to this time.

1227. Henry III., in the 11th year of his reign, granted to the burgesses of *Northampton* a charter, confirming by *inspeximus* that of King John.

1233. With respect to *Leicester*, we find, in the 17th of Henry III., two persons presiding over that town as *aldermen*:—being the first who occur in the books of the borough in that capacity. They seem to have continued for several years.

This appellation, as we have before observed in considering the Saxon Laws, is often mistakingly supposed to be descriptive of a corporate officer. The eolderman or elderman however is one of the earliest Saxon officers known in this country.—His office of government, and for the preservation of the peace, was of old, like the constable, very extensive:—they both usually presiding over considerable districts—as wards of cities,—in London and other ancient places. And at Calne, in Wiltshire, there is still an officer,

* Vide Ll. Will.

not belonging to the corporation, but nominated at the court leet, who acts as constable, and is called "alderman."^{Domesday.}

Simon de Mountford, Earl of Leicester, in this reign gave a confirmative charter to the burgesses:—reciting, that Robert, some time Earl of Leicester (the individual to whom the former grant was given), had enfeoffed, by his charter to the burgesses of Leicester, a certain pasture called Cowhey, in the South Fields of Leicester. And thereupon Simon de Mountford, then Earl of Leicester, newly remised, released, and entirely from him and his heirs, for ever quitted claim to all right which he had to the said pasture, to the free burgesses of Leicester.

Northamp-
tonshire
and
Leicester-
shire.
1239.
23 Hen. III.

This is a grant of a piece of pasture as a common for the cows of the burgesses or inhabitants, who at that time could even hold and enjoy lands as an aggregate body, though not incorporated, as is admitted by Lord Coke, &c. and is abundantly proved by Mr. Madox, in his *Firma Burgi*; nor was it doubted till Gateward's case, temp. Eliz.* introduced a new principle, denying the right of inhabitants to prescribe for right of common, except in respect of an ancient tenement, or as members of a corporation.

In the same reign there was another grant of liberties to the mayor and burgesses of Leicester, reciting,—that neither their persons nor goods, in any place of the king's dominions, should be arrested for any debt whereof they were not sureties or principal debtors, unless the debtors were of their *community*, and under their power, having wherewith to satisfy the debts in whole or in part, unless it should be reasonably made to appear, that the *mayor and burgesses* were deficient in doing justice to their creditors.

1268.
Rot. Par.
53 Hen. III.

The term "community" we have before commented upon, and should not again refer to it, but for the general notion, suggested originally by Brady, that this term has a corporate meaning,—to which every early document is directly opposed.

* Co. vi. 60 a. & Cro. Jac. p. 152. Hob. 86. 1 Bulst. 183.

Domesday. *Northampton* first sent members to Parliament in the 26th of Edward I., Leicester two years after,—they have both continued to return ever since.

Northamptonshire and Leicestershire.

Leicester appears to have continued without any material alteration till the close of the reign of Edward III., when—

1376.
49 Edw. III.

John of Gaunt, King of Castile and Leon, and Duke of Lancaster, by indenture to farm let, to the *mayor, burgesses and commonalty* of Leicester, the *bailiwick of the town*, suburbs, and fields—with the appurtenances of the same, with all executions,—profits of the port-mote courts,—fairs,—markets,—and all other courts,—rents,—farms,—goods,—chattels of fugitives,—felons,—forfeitures of waste, &c.,—deodands,—treasure trove,—with the keeping of all manner of prisoners, (except the Castle of Leicester,) the mill under the same,—the rents and services by the porter of the castle, of old time accustomed,—the court of the same, &c. ; and also granting to them and their successors sufficient timber in the woods of the manor of Leicester, for the repairing of all *houses, shops, shambles, &c.*

1378.

Richard II. in the 2d year of his reign, confirmed the charter of King John to the burgesses of *Leicester*, as to their sales in the *port-man-mote*.

1384.
7 Rich. II.

The same king granted also to Northampton a confirmation of the charter of Henry III.

1399.
22 Rich. II.

And in the 22d, granted to Thomas Hornby, of Leicester, the custody of the court called "*The Prince's Court*,"—this was probably the court leet,—as a document in the reign of Edward IV. speaks of the exclusive jurisdiction of the borough, to which the persons *commorant and abiding* there—that is the *resiants*, the suitors at the court leet—were liable.

1446.
25 Hen. VI.

In this year, from the return for *Northampton*, it appears that the mayor and bailiffs elected the members to Parliament, with the "*common assent of the town*"—words which seem to be tantamount to those we have before commented upon "*per commune concilium villatæ.*"

1464.

In the 4th of Edward IV. that king granted to Leicester

that it should have, like Northampton, four justices for the borough. The charter is as follows :

Domesday.
Northamp-
tonshire
and
Leicester-
shire.

“ For the greater security and quiet of the mayor and bur-
gesses of the town or borough of Leicester, it is granted to the
“ then mayor and burgeses, and to their successors, for ever :*
“ That the mayor for the time being, and *four* of the dis-
“ creetest *comburgesses*, with one person skilled in the laws, to
“ be called the recorder, should be *justices*, to keep and cause
“ to be kept the statutes of servants, artificers and labourers.
“ That the mayor and comburgesses, or any three or two of
“ them, with the recorder, should have power to hear and
“ determine all manner of transgressions, misprisions, extor-
“ tions, and all other causes, complaints, and misdemeanors
“ within the town or borough, as fully as the justices in
“ the county of Leicester, clipping of coin, &c. only
“ excepted.

“ That no justice of the peace of the county, or other justice
“ or commissioner of the king, or his heirs, should intermeddle
“ in any matter (except as before excepted).

“ That neither they, the mayor and burgeses, nor their
“ successors, nor any constable of the town or borough of
“ Leicester, nor any other person there commorant, should be
“ bound to appear before any other justice of the peace, or
“ any other justice or commissioner of the king, or his heirs,
“ either within or without the said town, to inquire or do any
“ thing in the matters aforesaid happening in the town or
“ liberties (except as before excepted), save only before the
“ mayor, and four of the discreeter comburgesses, and their
“ successors.

“ That if any mayor, burges, constable, or other person
“ within the town or burgh *abiding*, should be summoned or
“ impannelled, and refuse to appear before any other justice
“ about any such matter, or to swear or inquire about any heads
“ or articles thereunto belonging, that for such his refusal he
“ should not be put in contempt, or incur any loss or penalty
“ to the king or his heirs.”

That the mayor, and the 24 comburgesses (probably the

* Pat. Roll. p. 1. m. 12.

Domesday. grand jury), should yearly, upon the feast of St. Matthew, Northamp- elect four of the said 24 to be justices of the peace for the tonshire- and Leicester- year ensuing, and two of the said 24 to be coroners, and no shire. other coroner to intermeddle.

That they the mayor, burgesses and their successors, should not be impannelled on any assizes, juries, jurisdictions or recognizances though they concern either the king or his heirs, or other of his liege people—to be sworn or put upon the trial of any arraignment or assize, before any justice or commissioners of the king or his heirs, about any cause or matters happening without the town or borough.

1473. The same king, in another charter reciting,—that from 14 Ed. IV. the affection and love which he had to the town of *Leicester*, and also to his beloved and faithful the mayor and burgesses there *commorant*, granted to them a fair for their benefit.

1485. From the books of the borough, it appears,* that at a 1 Rich. III. common hall, by the power of the king's writ, directed to the mayor and his *brethren*, and the *commonalty*, for the election of burgesses to parliament, there is chosen by the *mayor's brethren* to be burgess, John Roberds; and by the *commonalty* there is chosen, Peres Curtis.

This appears to be an irregular and illegal election, notwithstanding all parties acquiesced in it. The members, by the writ and the law and usage of Parliament, were to be elected by the burgesses; the mayor and burgesses therefore could not make any arrangement amongst themselves for altering their legal course of election; consequently this divided use of the franchise, partly by the mayor and brethren, and partly by the commonalty, could not be legal:—both these bodies could not represent the burgesses—one must be wrong—the brethren were, in all probability, the jury—the commonalty, the body at large:—and there can be no doubt but that they were the burgesses, and were entitled to elect both the members.

Another entry states an ordinance, by the whole assent and agreement, as well of the *mayor* and all his *brethren*,

* Vide Nicholls's History of Leicester.

co-burgesses of the town, as by the *commonalty*, that the town should be divided into twelve *wards*, and in every ward, one of the mayor's brethren, for the time being, *dwelling* within the same ward, or next thereunto, was to be called an *alderman*; to have full power and authority to correct and punish all such people, at any time trespassing, after the quantity of his trespass; and if any such person would not obey the correction and punishment of the alderman, that then the alderman should show his name unto the mayor, who according to justice was to correct and punish the trespasser, until he should submit himself unto his alderman. And at every time it should happen any such alderman to de- cease, or to be mayor, that then at the next common hall to be holden after his decease, one other of the mayor's brethren to be chosen an alderman, and to have the power and correction, &c.

Domesday.
Northamp-
tonshire
and
Leicester-
shire.

This division of Leicester into wards, under separate aldermen, seems to have been made in conformity with the precedent of London—on that ground alone it would not have been justifiable:—but as it was also in conformity with the principles of the general law, it was both justifiable and expedient—the wards being tantamount to hundreds; and the aldermen, being as shown before, in fact constables.

The mayor of Leicester and his brethren, having, with the consent of the commonalty, by the last ordinance, placed the town under the government of the *aldermen*, appear, in the 4th year of the reign of King Henry VII., to have adopted a still further expedient to prevent those disturbances which had accompanied the elections at Leicester, and a mandate for that purpose was issued to the borough. Before we state it, however, it may be necessary to recall the attention of the reader to the statute of the 8th of Henry VI. relative to the election of knights of the shire, which recites, that, “Whereas
“ the election of knights of shires to Parliament, in many
“ counties, have now of late been made by very great out-
“ rageous and excessive number of people *dwelling* within
“ the same counties, of the which most part was of people
“ of small substance, and of no value, whereof every of them

1488.

Domesday. “ pretended a voice equivalent, as to such elections to be
 Northamp- “ made, with the most worthy knights and esquires dwelling
 tonshire “ within the same counties,—whereby manslaughter, riots,
 and “ batteries, and divisions among the gentlemen and other
 Leicester- “ people of the same counties shall very likely rise and be,
 shire. “ unless convenient and due remedy be provided in this
 “ behalf.”—The statute then proceeds to limit the right of
 election for counties to the 40s. freeholders.

The mandate to which we have referred, seems to have borrowed some of its spirit from this recital. It is directed to the mayor, bailiffs, comburgesses and burgesses of the town of *Leicester*, &c.; and recites, ⁴ that, forasmuch as that at
 “ every election of the mayor or a burges of the Parliament,
 “ —or at assessing of any lawful imposition,—the *commo-*
 “ *nalty* of the said town, as well poor as rich, have always
 “ assembled at the common hall; whereas such persons be of
 “ little substance or reason, *and not contributors*, or else fall
 “ little to the charge sustained in such behalf, and have had
 “ great interest through their exclamations and hedyness, to
 “ the subversion, not only of the good policy of the said
 “ town, but likely to the often breach of the peace, and other
 “ inconveniences increasing, and causing the full misery and
 “ decline of our said town, and to the great discouragement
 “ of some of the governors there—for reformation whereof,
 “ and to the intent that good rule and substantial order may
 “ be had and entertained there from henceforth, the king
 “ strictly charges the said mayor, bailiff, and 24 comburges-
 “ ses of the said town now being, that at all common halls
 “ and assemblies thereafter to be holden there, *as well for the*
 “ *election of the mayor, of the justices of the peace, and bur-*
 “ *gesses of our Parliaments*, as also of passing of any lawful
 “ impositions, or otherwise—they jointly choose and call
 “ unto them the bailiff of the said town for the time being,
 “ and also 48 of the most wise and sad *commoners, inhabitants*
 “ there, after the discretions of the said commonalty, and no
 “ more; and there to order and direct all matters occurrent
 “ or supervening among you, as by the reason and con-
 “ science shall be thought lawful and most expedient.

“ Given at our palace of Westminster, under our seal of our
 “ said Dutchey, the 2d day of August, 4th year of our
 “ reign.

Domesday.
 Northamp-
 tonshire
 and
 Leicester-
 shire.

“ By council of our said Dutchey of Lancaster.”

However great the inconveniences which had attended the tumultuous meetings at Leicester before this mandate—however just the complaint of the king—and however necessary some corrective might be—yet the taking the elections from the whole commonalty, and restraining them to a select body of 48, appears to have been a measure too strong for the occasion, and to have partaken of the common error of remedies hastily applied in the moment of difficulty, that they exceed the necessity which demands them. The law and usage of the constitution would have fully justified the exclusion of all those who, in the words of the mandate, “ were of little substance, and “ not contributors to the public charge;” but nothing could justify the exclusion of all the other burgesses but the 48.

The body at large therefore, as might naturally be expected, were dissatisfied with being deprived of their constitutional rights; and at the next meeting for the election of officers to the town, after the promulgation of this decree, the *inhabitants* insisted upon their ancient privileges in so tumultuous a manner, that the interference of Parliament became necessary; not only on account of the conduct of the general body of the burgesses, but even the grand jury (the 24) partook in the feeling of the moment; and in the 5th of Henry VII., at the time of Thomas Davy's being mayor, he and his 24 brethren took an oath, that no one of the 24 should take upon them the office of mayor, or other office, at the election of the mayor and his brethren, and the 48 of the commonalty, on pain of being excluded from the bench, and the number of the 24, without a contrary command had from the king, &c.

1489.

Legislative provisions to the following effect (rendered more justifiable in Leicester than the mandate, by the repe-

Domesday. titution of the tumults, and the strong act of the 24,) were
 Northamp- enacted. First with respect to Northampton,—and immae-
 tonshire
 and
 Leicester. diately afterwards with respect to Leicester.* ✓

1489,
 5 Hen. VII. “Forasmuch as of late divisions have grown, as well in the
 towns and boroughs of Northampton and Leicester, as in
 other towns and boroughs corporate, amongst the *inhabitants*
 of the same, for the election and choice of mayors, bailiffs,
 and other officers,—by reason that such multitude of the *inha-*
bitants being of little substance, which oft in number exceed
 in their assemblies others that have been approved decent and
 well-disposed persons, have, by their multitude, and headi-
 ness used in the assemblies, caused great troubles among
 themselves, as well in the elections as in assessing of other law-
 ful charges amongst them, to the subversion of the good rule
 of the said boroughs, and oft times to the great breach of
 the king’s peace within the same. For reformation whereof,
 and for the more quiet and restfulness of the king’s subjects
 hereafter, and for the conservation of the king’s peace,—Be
 it enacted, by the advice and assent of the Lords and Com-
 mons, &c., that from henceforth the elections of mayors,
 bailiffs, and other officers, and also the assessing of all
 lawful charges that hereafter shall be made and had in the
 borough of Northampton, shall be had, made, and used, in
 the following manner:—that is to say—the mayor and his
 brethren for the time being, that there oft times past have
 been mayors, or the more part of them, upon their oaths,
 shall choose 48 persons, of the most wise, discreet, and best-
 disposed persons of the inhabitants, by their discretions,
 other than before that time have been mayors and bailiffs of
 the same; and the same persons, or part of them, from time
 to time hereafter, to change when and as often as shall
 seem necessary; which persons, and the mayor and his
 brethren, and such persons as there have been mayors and
 bailiffs of the said town for the time being, or the more part
 of them, shall make yearly election of all the mayors and
 bailiffs; and the elections by them so made, to be effectual
 in like manner as if the elections were made by such form as

* Parl. Rolls., p. 432.

aforetime hath been used. Provided, that if in the elections, or any of them, the voices be divided and equal for sundry parties, then the voice of the mayor for the time being, to stand for two voices.”

Domesday.
Northamp-
tonshire
and
Leicester-
shire.

It should be observed with respect to these enactments, that—although the Legislature restrained the elections of the municipal officers for the future to the 48, yet they recognised the inhabitants as the burgesses, and as the persons who had before acted; nor do they interfere with these rights, excepting as far as they relate to those elections; and therefore we may again conclude, from these provisions, upon the authority of Parliament,—that the *inhabitants were the burgesses of those two places*.

Henry VII., in the 20th year of his reign, granted a charter to Leicester, confirming, by *inspeximus*, that of Edward IV., and giving exclusive jurisdiction to the justices of the borough in the suburbs,—with the usual non-intromittant clause.

1504.

In the 31st of Henry VIII., in consequence of a commission from the king, the *constables* of Leicester were sworn to *present* all persons, *spiritual* and *temporal*, widows, and all that were 16 years of age, to show what harness they had meet for use—and the value of their goods—and the yearly value of their lands, tenements, and other profits—what they have, or be worth, in their several *wards*—and if there be any *retained*, and to whom—and whether there be any *aliens* or *strangers* born out of the king's allegiance, and who be their lords, and whose tenants, and of whom they hold.

1509.

There is in this document a peculiarity which claims observation: it directs that all persons, spiritual and temporal, were to be presented:—till the Reformation, all spiritual persons were as such exempted from temporal offices and duties,—but when the great change was effected by that event, the spiritual persons were subjected to temporal duties, of which this affords an instance.

The close also of this document establishes the connection which even at these times existed between the lords and their dependents, though villainage was gradually wearing

Domesday. out; but the continuance ~~of the~~ dependency upon their lords, accounts for the return here required, and for the distinction between villains and freemen being preserved in this record.

Northamp-
tonshire
and
Leicester-
shire.

1547. In the 1st of Edward VI., there is a general confirmation of all the previous charters to *Leicester*; and the same occurs again in the 1st year of Queen Mary,—and the 1st of Queen Elizabeth:—from whence it is clear—that the rights and privileges of this place, which we have established in the inhabitants in the reign of Henry VII., must have continued the same to the time of Queen Elizabeth,—and the class of persons who were the burgesses, must have been as theretofore—namely, the freemen,—the *liberi homines*,—commorant and resiant in the borough.

The effectual nature of the police then existing in *Leicester*, may be ascertained from the following documents.

1554.
1 Mary.

At a common hall, holden on the 17th November, in the 1st year of the reign of Queen Mary, a man having been killed in that county by night, It is enacted, that no person, of what degree soever, *inhabiting* in the town or suburbs, go abroad in the street after nine o'clock at night, and after curfew-bell leaves ringing, except officers and the watch. And if any person *dwelling* in town or suburbs, after nine o'clock be found in the street, or keeping company out of his own house, in any new tavern or ale-house, without reasonable cause, to be known before the mayor, or *alderman* of the *quarter*, (which must mean the ward,) he shall forfeit the first time, 12*d.*—the second, 2*s.*—the third, suffer imprisonment, at the will of the mayor or *alderman* of the *ward*:—also, the keeper of the inn, tavern, or ale-house, for every time shall forfeit 12*d.*, and suffer imprisonment 14 days, without favour; but *strangers* may have lawful pastime in their inn,—but not to go abroad without the good man of the house, or some of his servants, on pain of going to the ward, there to remain, to be examined by the mayor or justices. And if any innkeeper, or other person occupying the lodging of *guests*, receive into their house *any stranger* after the said time, *he shall repeat the names and dwelling places of such*

guests, on the morrow, to the *alderman* of the *ward*, or his deputy, on pain of suffering imprisonment for 14 days, without favour.

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Northamp-
tonshire
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shire.

It is impossible not to be struck with the efficiency of this mode of municipal government—in perfect accordance with the provisions before quoted from the Saxon laws—and repeated in Bracton;—the long continuance and exercise of which, as evinced in Leicester, is no small evidence of their practical utility and wisdom.

It appears, from the books of the borough at this time, that, at a common hall, it was agreed, “that every *stranger*, “who hath not been *prentice* in the town, nor *born* in the “same, shall pay for his freedom 20s., and otherwise not to “be made free.”

1558.
1 Eliz.

Thus at this period, the practice of the borough was in conformity with the common law; and the apprentices—as persons clearly of free condition—were to be admitted as freemen. Those also who were proved, by birth, to be free, were to be in the same state. But any stranger, not proved, by either of the circumstances of apprenticeship or birth, to be free, was not be admitted into the borough without paying a fine. This operated both as a contribution to the common stock, to which he had not been before a contributor,—and also as a security against any claim made upon the borough for admitting, as free, a stranger not of free condition, who might be the villain of some lord, and be claimed by him.

Another entry in the borough books states, that, at a common hall, it was agreed, “that no one should receive or keep in his house any *stranger* above *three days*, without giving notice to the mayor, or *alderman* of the *ward*,—unless he knows from whence *he comes*,—and *knows* him to be *honest*, and will *undertake* for him,—on pain of forfeiting for every day, 6s. 8d.

1562.
5 Eliz.

This, and the succeeding document, are mentioned, as showing—that the municipal government of Leicester was even at this time founded upon the ancient Saxon laws, as to permanent responsible residency, and the jurisdiction of the Court Leet. These provisions are in strict conformity with

Domesday. those laws,—which provided, that every man should be responsible to the law in the place in which he *resided*; and that if he went elsewhere, as a guest or an occasional resident—his host, or some other permanent inhabitant, should be responsible for his good conduct.

**Northamp-
tonshire
and
Leicester-
shire.**

The other entry referred to above is as follows:—

1568.
10 Eliz.

“That no person having lands or tenements in the town or suburbs of *Leicester*, shall take upon him to put into his houses or tenements any person to be his *tenant*, before he has *presented* such foreign persons before the *mayor* and *aldermen* of the ward where he shall *inhabit*, to be examined *from whence he cometh*, and what honest behaviour he is of,—on pain of 6s. 8d. for every default, to be paid by the owner of the house.”

The following passage then occurs in the books, which seems, in some degree, a departure from the severity of the provisions of the 4th of Henry VII.

1572.

The act about election of chamberlains, made on St. Matthew's day, 6 Henry VII., was repealed 20th September, 16 Elizabeth, when it was ordained, that henceforth it shall be lawful for the mayor elected to nominate and choose his chamberlain, and for the *commonalty* to choose and elect for their chamberlain,—as well any such person as hath not before fined, as any such as have fined for the same, *in order as they be most ancient in election*. And if *any of the aforesaid persons, inhabitants* of the said town, so elected, do obstinately refuse, and will not serve in the office of chamberlain aforesaid, that—but here the document breaks off, and is followed by a blank leaf.

It is impossible not to draw from hence the inference, that the *inhabitants* were on the one hand subject to the personal duties required in the borough, under the Saxon term “*Lot*,”—and, on the other hand, as a reciprocal advantage—entitled to all its privileges. The inhabitants, also, described, as we have often seen, by the term “*Commonalty*,” and the successive rotation of officers—holding burdensome offices—should be remarked as being useful,—practical,—reasonable,—and equitable.

On the subject of litigation in the town, the following entry occurs:—

Domesday.
Northamp-
tonshire
and
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shire.

At a common hall it was agreed, that one townsman should not sue another, but should complain to the mayor or *alderman* of the *ward*, who was to argue them, without suit of law; or, if he could not, the party aggrieved was to demand licence to sue in the Court of *Portmote*.—If any did contrary, he was to pay 6s. 8d.. It was also agreed, that no *strangers* be admitted *freemen* under 5l.

The universally acknowledged propriety of preventing vexatious litigation, has, in modern times, suggested many expedients for its correction,—as courts of reconciliation,—and local courts of modern institution. But the plainest dictates of wisdom would suggest the expediency of rather attempting to revive the ancient institutions—which were founded for this purpose,—than to speculate in hasty projects for supposed improvements, without the sanction of practice and experience.

After this entry a provision follows for executing the act made 21st February, 10 Eliz.*

567.

“ For which purpose it was agreed, that yearly, in every *ward*, the mayor shall appoint two discreet persons, who have no lands of their own, to search their *ward* every month, to find any doing contrary to the said act, and to see that there be not above *one tenant in a house*; the searchers to make monthly presentments to the mayor,—and land-lords offending to pay 6s. 8d.”

The principle of the English law, much revered by our ancestors, was, that “ every man’s house was his castle. Which being reasonably interpreted means,—that as every man should have the controul and government of his house, so would the law not encroach within it,—but make each householder responsible for the conduct of his domicile, and its inmates:—thus regulating and defining the boundaries between domestic regulations — and municipal government. The practical application of this wise and social scheme, is to be seen in these repeated declarations of the law for the guidance of the inhabitants of Leicester.

* See before, p. 236.

Domesday.

Northamp-
tonshire
and
Leicester-
shire.
1578.
21 Eliz.

We have next, this important entry :—

At a common hall, it was enacted, “that if any *freeman* go to *dwell* out of the liberties of the town, a *whole year and a day*, and afterwards shall come and *dwell* again here, and hath not, during such time, borne such charges as other freemen have done, he shall not be suffered to use any trade, or be *reputed as a freeman*, till he be *sworn anew* to the *corporation*, and *pay a fine*, which shall be at least 10s.”

This provision is also in conformity with the common law, which made any man liable, after a residence of a year and a day in a place, to be amerced, for not having been sworn and enrolled in the Court Leet, and not giving his pledges there, to be amenable to the law. The necessary consequence of which is—that a person who had left a place for a year and a day, would, in the ordinary course, become a sworn and enrolled inhabitant of another place. And as by Magna Charta, he could not be bound to do this royal suit and service in two places, his superinduced liability in another—discharged him from his former liability, and he would cease to be an inhabitant of the place to which he had previously belonged. If, therefore, he should return—he would be then treated as a *stranger*, his connection with it having been broken. And he would pay a fine, either as a contribution for the period during which he had ceased to pay to the public stock, or as a security against any claim to be made upon the borough, for any act which he might have done during his absence from it.

We should however observe, that, in this entry, the word “*corporation*” is introduced, although, as the reader has had a full opportunity of judging, from the documents before cited with reference to this place, that there is no pretence for saying, that this borough was entitled at that time to the appellation of a body corporate.

We must remember, it was in the reigns of Queen Mary and Queen Elizabeth, that all the former charters to Leicester were confirmed. And none of them spoke of it as a corporation. That term was, in fact, *first* introduced in the time of Henry VI.,—but in the reign of Queen Elizabeth, had

become common, both in practice and ordinary usage. The adoption of the term, therefore, with respect to Leicester is easily accounted for; but at the same time it is apparent, that it was altogether unjustified.

In the 28th year of the same reign, in a case which occurred in the King's Bench,* the plaintiff insisted, upon the authority of the extract ~~of~~ ^{from} Domesday, which we have before quoted, that Leicester was held in ancient demesne, and that the *inhabitants* were discharged of toll, as appeared by the queen's letters patent. But there was no claim of any exemption as a corporation, or in respect of any corporate right or charter, although the case was discussed at much length, and many exceptions were taken and answered. Sir Edward Coke, in the course of giving his judgment, said, that towns were before manors; and that London, though it had the name of ancient demesne, had not the liberties belonging to it. And Shute Justice said, that *inhabitants* within ancient demesne, although not tenants, should have the privilege;—an observation much in accordance with what we have before urged, as to these and borough rights *depending upon inhabitancy, and not tenure*. He adds, that tenants at will, in ancient demesne, should be discharged of toll as well as tenants of the freehold, for life or for years; for which he cites the 27th of Henry VI., c. 37.

Moile said, that London was ancient demesne; for the citizens prescribed—that a villain who hath there *dwelt*, should not be taken from thence by *capias* or attachment:—establishing—that the doctrine of villainage was, even at that time, continued; though villainage itself had fallen into desuetude;—and that exemption from the liability of a villain, depended *on residence*; as it did from the earliest periods, and as recognized expressly in Glanville.—But Billing rejoined (as the fact is), that London is not in Domesday.

We may therefore assume from the general features of this case, and from the grounds upon which it was argued, that

Domesday.
Northamp-
tonshire
and
Leicester-
shire.

1585.
28 Eliz.

* Leon, ii. 190.

Domesday. although *Leicester* was entitled at that time to privileges, as having been held in ancient demesne, it *was not then a corporation*. It seems, that after the discussion of this case, it was felt by the inhabitants, that they wanted the additional character of incorporation, which many cities and boroughs had at that time acquired. And therefore, in three years afterwards, we find, that an application was made to the queen for a charter of incorporation.

1569.
31 Eliz.

It was the common practice of Queen Elizabeth—or at least, of her advisers—to insert in the commencement of the charters of that period, a recital, that the places had before enjoyed franchises by prescription, or had been incorporated; of which, we shall perhaps have occasion to cite a variety of instances. This expedient was probably resorted to, from the new doctrine as to corporations having pointed out the necessity of aggregate bodies being clothed with that privilege; and there is not a more decisive proof of the recent introduction of that doctrine, than the change which took place in the recitals of the charters subsequent to the reign of Henry VI.; when the first incorporation was created.

Queen Elizabeth therefore recites in her charter to *Leicester*, that the borough had existed *corporate* of one mayor and 24 aldermen, and one other society, commonly called the forty-eight; and that the mayor and the said society had been incorporated by her progenitors. The queen then proceeds to create in Leicester, a body corporate and politic, for ever; to consist of one mayor, 24 aldermen, and 48 burgesses of the *inhabitants*, under the name of “Mayor and burgesses of the town of Leicester;” and grants, that they should be capable to hold and sell lands,—to plead and be impleaded;—that one of the aldermen should be elected mayor every year,—and that they, the mayor and burgesses, should enjoy all former privileges. The charter also provides for the election of mayor.

Certain shambles are likewise granted to the borough,—and directions are given concerning the lands and hospitals of the town.

* Pat. 31 Eliz. p. 12.

Although this charter recites, that Leicester had theretofore been a corporation; yet, as care has been taken to state all the previous charters of this borough, the reader will be satisfied, that the recital is, in point of fact, unfounded. The confirmation of the former charters, up to the 5th year of the same reign, is decisive upon this point; and to every unprejudiced mind it must be clear, *that Leicester until this period was not incorporated.*

Domesday.

Northamp-
tonshire
and
Leicester-
shire.1589.
31 Eliz.

The inconveniences resulting from the grant of this charter of incorporation, being soon felt, a petition was presented to the queen, complaining of the abuse of her majesty's late grant to the corporation; by which the poor were oppressed,—and many private individuals enriched by indirect means. And it was accordingly agreed, to prevent the recurrence of such abuses,—that whosoever should be found guilty of similar acts, should be dismissed the *company*, and disfranchised.

1590.
33 Eliz.

The change of language in this entry, is apparent. *The inhabitants*, and *the men commorant and abiding* in the place, are no longer spoken of; but the term used is, the “*company*,”—evidently attempting to assume, in pursuance of the incorporation, the character, and terms properly applicable to guilds and fraternities.

Another instance also occurs, in which the entries attempt to give the municipal government a more immediate connection with trade, than it before possessed; for we find it agreed, that every *freeman* using his trade elsewhere, who did not return home nightly to his house in Leicester, should pay weekly, double in every payment to all charges, watch and ward, &c. And if he did not return home, and continue in the town, as inhabitants ought, before the conception of our Lady next, he should pay for every week he so continued out afterwards, 40s. a week, to the use of the visited and *poor people*.

1594.
36 Eliz.

Nevertheless, this entry proves,—that the system of watch and ward still continued; and that every inhabitant householder was liable to it. So that, although the place had been incorporated, the ancient system of municipal

Domesday. government and liability was still preserved unaltered :—
Northamp- establishing,—with many other facts, which in the course
tonshire of our inquiry, we shall adduce,—that incorporation was
and only a collateral superinduced capability; in no respect
Leicester- substantially altering either the general or local law ;
shire. excepting only, as to the capacity of holding in succes-
 sion and acting—as an aggregate body, under one common
 name.

We should also observe, that this entry affords an in-
 stance of the poor being at that time paid out of the com-
 mon stock.

1569.
 41 Eliz.

Queen Elizabeth, in the 41st year of her reign,* granted
 another charter of incorporation to *Leicester*, somewhat
 resembling the former. It is to this effect.—It commences
 by reciting, “That whereas, our borough of Leicester, in
 “ our county of Leicester, is an ancient and populous bo-
 “ rough, and from ancient times, was a borough *incorporate* ;
 “ and the *inhabitants* and their predecessors, had held hi-
 “ therto, divers liberties, franchises, privileges, and immu-
 “ nities, by divers prescriptions and customs in the same
 “ borough, from time of memory, &c., and by divers conces-
 “ sions and grants from our progenitors.”

The charter then makes Leicester a free borough ; and
 the burgesses and their successors a body politic and corpo-
 rate, under the name of “ mayor, bailiffs, and burgesses of the
 “ borough of Leicester ;”—with powers to sell and purchase
 lands ; and to plead and be impleaded by their corporate
 name. And granting to the corporation, for the first time,
 a common seal ;—the mayor and aldermen to have power
 of making laws for the good government of the burgesses,
 artificers, and inhabitants. It is also directed, that there
 should be a mayor and two bailiffs ; and 24 honest and
 discreet men, *inhabiting and abiding* within the borough,
 who should be called *aldermen* of the borough ;—and 48
 other honest and discreet men, *inhabiting and commorant*
 within the borough, commonly called the company of eight-
 and-forty :—but that in future they should be called the

* Rot. Pat. pars 1.

common council of the borough, as assistants of the mayor and aldermen.

Domesday.
Northamp-
tonshire
and
Leicester-
shire.

Other provisions, usual in charters of that time, are then added. And it is provided—that the mayor, recorder, and four aldermen, should be justices of the peace. After which follows a grant of *view of frank-pledge* of all the *inhabitants and resiants* within the borough, to be holden twice a year, before the mayor, bailiffs, steward, &c.; and it is provided, that no *foreigner* should buy or sell any merchandise within the borough, except in gross, but only in the time of fairs, markets, &c. Jurisdiction is given to the mayor, bailiffs, and burgesses, over the bishop's fee, &c. &c.; there is a grant of a market for wool, &c.;—and all the former privileges and grants to the borough are confirmed.

This charter, like the preceding one of the 31st of Elizabeth, falsely recites,—that Leicester had been, from ancient times, a body corporate; but it speaks of the privileges which had been previously enjoyed by the *inhabitants*; and describes the persons who were to be eligible to offices, in the language anciently applied to them, as “abiding and commorant” in the borough. And it should be observed,—that as the municipal government of the place is provided for, by the creation of justices and other officers; so also the view of frank-pledge, so important a privilege connected with the exclusive jurisdiction of the borough, is granted and confirmed.

A charter of King James I.* recites that of the 41st of Elizabeth, and grants to the mayor and aldermen, the government of the lands of the corporation; and directs,—that the mayor and aldermen, and 24 of the ancientest of the company of the 48, should have power to make laws for the regulation and demising of the lands; to which the *common seal* is to be affixed in their presence; and without such consent they are to be void. After other usual provisions, it recites, that Queen Elizabeth, for *the better relief of the poor of the town*, had granted, that the mayor, bailiffs, and burgesses might hold a wool market;—and in the conclusion, it confirms all the former liberties.

April 17,
1605.
3 James I.

* Rot. Pat. pars 22.

Domesday. This charter is renewed in the seventh year of the same Northamp-
tonshire reign.
and
Leicester-
shire.

NORTHAMPTON.

1618. Northampton appears to have continued for a long period of time, without any new grant; but was at length incorporated, in the 16th year of King James I. That king granted a charter which, like Queen Elizabeth's to Leicester, recites, contrary to the truth, that Northampton was an ancient and populous town; and from ancient times was a town incorporate, of mayor, bailiffs, and burgesses, of the town aforesaid; and that the *inhabitants* of the same, and their predecessors, had held divers liberties, &c. by charters and prescription. That the mayor, bailiffs and burgesses, had by petition suggested to the king, that, near to the town, there existed several places, commonly called Cotton End, West Cotton, and St. James, without the jurisdiction of the town, and where artificers, mechanics, manufacturers, and *other free burgesses* of the town, went to reside; and several arts and mysteries were used there, to the prejudice and injury of the town, and the *burgesses and inhabitants of the same*. And in order that all the *inhabitants and residents* in the same places might be under the rule and governance of the mayor, bailiffs and burgesses, the king granted to the mayor, bailiffs and burgesses, that the limits of the town should extend as prayed; that Northampton should be, in conjunction with them, a free town; that the burgesses there should for ever be one body, corporate and politic, by the name of "The Mayor, Bailiffs and Burgesses of the Town of Northampton."*

The usual corporate powers follow, with the appointment of the mayor, two bailiffs, and 48 of the most worthy and discreet men, *inhabitant and commorant* within the town, commonly called the company of Eight-and-forty, to be the common council, in conjunction with those burgesses who had served the office of mayor or bailiff.

Power was then given to make bye-laws.

* Rot. Pat. pars 15, n. 7.

The mayor, and such burgesses as had served the office of mayor, were to elect the 48. Domesday.

The mayor, bailiffs, and such burgesses as had served the office of mayor and bailiffs, were to elect the mayor, according to the form of the statute made in the 2d of Henry VII. Northamp-
tonshire
and
Leicester-
shire.

The bailiffs were to be elected from the company of eight-and-forty, by the mayor and bailiffs, and those persons who had been mayors and bailiffs, and of the company of eight-and-forty:—and a burgess or freeman refusing to take any municipal office, was to be fined.

The observations we have already made with respect to the charter of Leicester, apply equally to this.

Thus we have traced the municipal history of both these places, until we arrive at that period when the records of *Parliament* afford us an opportunity of considering the decisions relative to the burgesses, in regard to their exercise of the elective franchise.

At the Restoration, an implied negative was justly placed upon the exclusive right of the select body of the corporation of Northampton to vote—it was a borough, having burgesses before the Domesday survey,—and returned members to Parliament from the time of Edward I. The persons, therefore, who were burgesses at those periods—and they were always the same class, for there had been nothing to change them—were those who had the right to vote. They could not be the corporation,—because we have seen, that that body was not created until about 50 years before this period. The committee, therefore, most properly resolved,—that “the *commonalty*, as well as the bailiffs, aldermen, and “common councilmen, had a right to elect.” 1660.
12 Car. II.

In 1661, Mr. Serjeant Charlton reported many “miscarriages” of the mayor of Northampton, and for which that officer was committed to the custody of the serjeant-at-arms, and reprimanded. One of these “miscarriages,”—“making infants free on the morning of the election, that 1661.

Domesday. "they might vote as he pleased,"—strikingly exemplifies the evils resulting from the mode generally adopted by corporations in granting freedoms.

Northamp-
tonshire
and
Leicester-
shire.
1663.

In 1663, the committee directly negated the exclusive right of the select body of the corporation of Northampton, by resolving,—that the right did not belong to the mayor, aldermen, and 48 only.

However, in the same year, the governing body in the corporation appear to have procured a fresh charter from the crown, confirming the former privileges, and re-investing the government of the town in themselves.

In the same year, the parliamentary right was again brought under discussion; and Sir Job Charlton reported, that the *inhabitants, being householders*, were the proper electors: the House agreeing with the committee in that resolution. So that it appears—whatever charters were granted—the *inhabitants* were nevertheless constantly treated as the *burgesses* of the borough—in which character alone, they could be entitled to vote for members of Parliament. No further discussion as to the right of election for Northampton appears: and therefore it must be considered as *indisputable*—that the *inhabitants always were, and now properly are,—the burgesses of Northampton*.

1670.
21 Car. II.

The charter of the 15th of Charles II. to Northampton, was brought under the consideration of the Court of King's Bench, in the 21st year of that monarch's reign, upon an application by a person of the name of Braithwaite, for a mandamus to restore him to his office of alderman.* In the return to the writ, the corporation set forth an amoveal, under the powers granted to them by that charter;—and the return was supported by the court.

1683.
35 Car. II.

In the 35th of Charles II., the charter of the 15th of that king was, like those of many other places, surrendered, and another granted—with the illegal clause, vesting the power of placing and displacing the officers in the crown. But the surrender not having been enrolled, the new charter was, by the opinion of Sir Edward Northey, the then attorney-

* Braithwaite's Case, Vent. i. p. 19.

general, considered not binding,—and therefore the borough acted upon that of the 15th of Charles II. until 1795, when the burgesses received another charter:—the consideration of which we shall postpone to a subsequent period.*

Domesday.
Northamp-
tonshire
and
Leicester-
shire.

1769.

In 1769, it appears, that, notwithstanding the commitment and reprimand of the mayor in 1661, the mayor and town clerk assumed the right of admitting persons to be freemen of *Northampton*, who had not any previous title, by birth, —servitude,— or election; and, in consequence, a *quo warranto* was applied for against them, in Michaelmas term of that year.† The rule was made absolute, after a search for precedents; and, upon the authority of the Hertford case, (to which we have before referred,‡)—the Lostwithiel case, in the 7th of Queen Anne—the Liverpool case, in the 3rd of George II.—and the New Radnor case, in the 32nd George II. The information was accordingly filed; and is given at length in the report, as well as the plea, setting forth, that they had been a body corporate from time immemorial (contrary to the fact, as we have before shown): that there had been immemorially a mayor and a town clerk (for which assertion there was not the slightest pretence). It then detailed the charter of the 15th of Charles II.:—the power under it of making bye-laws; and alleged a usage,—that the mayor and town clerk had, from time immemorial, been used to admit to the freedom all persons having a right to be admitted, either by birth or servitude, or by any order of the mayor, bailiffs, and burgesses, or in any other manner howsoever. That the mayor and bailiffs, and the major part of such of the burgesses who theretofore had been mayors and bailiffs, and the 48, made a bye-law, that persons not entitled by birth or servitude, should thereafter be admitted on the payment of 10*l.*;—except such as had married the daughter of a freeman, and those upon the payment of 5*l.* By virtue of which ordinance, the mayor and town clerk had been used (as they alleged,) to admit such persons. The plea

* Vide post., Charter to Northampton in the reign of George III.

† *Rex v. Breton*, Burr. iv. 2260.

‡ Vide ante, p. 177, et seq.

Domesday. concluding with a traverse, that no person ought to be admitted a freeman, unless elected in the manner set out in the information, or entitled by birth or servitude.

Northamp-
tonshire
and
Leicester-
shire.

The bye-law was, upon demurrer, held to be void—and judgment was given for the king. Thereby expressly negating the power of the mayor and town clerk to make freemen or burgesses. It is also obvious, that the right of electing and nominating them, claimed by the common council in the information, was likewise without any lawful foundation; because none of the charters, creating or recognising that body, gave to them any such power. And as burgesses had existed long before the common council, it is clear—that they must have been anciently sworn, enrolled, and admitted, in some other manner—which we have shown, by our early laws, to have been—at the court leet. The fact is,—that none of the early charters,—as we shall see hereafter—provide for the admission of freemen or burgesses; and very few of the more modern charters. Some other mode, therefore, of creating burgesses must be looked for; and no plausible solution of that difficulty can be surmised, but that obvious one, which the common law suggests,—of their being admitted, sworn, and enrolled, at the Court Leet of the borough, in respect of their residency within it—whereby, being freemen *of*, or *belonging to* the borough, they were its burgesses.

LEICESTER.

But to return to the Borough of *Leicester*.

1664.
16 Car. II.

From the 3d of James I. to the 16th of Charles II. nothing appears to have occurred to change the condition of this town. A new charter was granted by the latter king, in 1664, confirming the former, and commencing by a recital stronger even than those upon which we have before commented; as it is stated, that the borough had *been incorporated for ages past*:—the falsehood of which we have before established—unless that term could be applied to the period between the 31st of Elizabeth and the 16th of Charles II., an interval of only 76 years.

Nor does any thing else occur, to vary the situation of Leicester, until the *parliamentary* records afford us evidence of the exercise of the elective franchise by the *burgesses*.

In 1705, the right of election came before a committee of the House of Commons; and it was admitted, on both sides, to be in—the freemen not receiving alms—and in *the inhabitants paying scot and lot*, which has never been varied or questioned.

In the course of the investigation, an inquiry was instituted, (of which traces may be found in many other places,) as to the right of the *certificate men* to vote; and it was resolved,—that they were not entitled, unless they had obtained a settlement,—which again establishes, that *the same fact of permanent residence ought, by law, to settle the three important questions, of burgh-ship—the right of voting for members of Parliament—and the right of parochial settlement.*

Many of the voters were objected to, on both sides, as being made free at the charge of the candidates.—A circumstance showing how open this mode of admission of freemen is to abuse,—and how ready a means of corruption it affords.

Before we quit this part of the case, it should be remembered, that here the right of election is decided to be in the *freemen—and—the inhabitants paying scot and lot*—which is an absurdity upon the face of it; for as the only question was, who were the burgesses—and they could obviously be but of one class—it would seem impossible that a double qualification, like the one here adopted, could be supported; because if either of those rights were established, it negated the other,—unless the freemen were also inhabitant householders paying scot and lot—in which case it was unnecessary to introduce the freemen at all; because—they would be entitled in their other right, as inhabitant householders paying scot and lot. On the contrary,—if the freemen were non-resident, and not inhabitants,—then their right would negative its being in the inhabitants. In fact, they cannot both exist as separate rights; either they are the same, and resolve themselves into each other—or, if they are different,—they are contrary to each other, and one only can be the real right.

Domesday.
Northamp-
tonshire
and
Leicester-
shire.
1705.
4 Anne.

Domesday. Such are the intricacies and difficulties which accompany a departure from the simplicity of our ancient common law—while, by adhering to its principles, the whole is rendered as clear and distinct as truth generally is. As long as the distinction existed between freemen and villains, freemen only were entitled to the independent privileges of the state:—if they lived in the county at large, they enjoyed them in that extensive district:—on the other hand, if they inhabited in a borough, they enjoyed it within that limit; and, being of *free condition* and *inhabiting* there, they were, in the simple language of the law, the *men*, or the *free burgesses*, of that borough.

Northamp-
tonshire
and
Leicester-
shire.

Thus the decision of the committee, as to the right of voting for *Leicester*, should be considered—and in that manner only can it be reconciled with the general law, and the documents we have quoted.

1767.
7Geo. III.

Before however concluding this case, we ought to notice a decision in the King's Bench,* of the 7th George III., upon a mandamus to restore one James Sismey to the office of alderman; the return to which stated, as the ground for the removal, that Sismey had departed with his family from Leicester, with an intent to reside, inhabit, and dwell with his family, for the future, elsewhere; and from thence did continually abide, reside, inhabit, and dwell with his family, out of the borough. This return the court held to be insufficient, upon grounds which, with submission, appear to be untenable. Lord Mansfield said, that "the applicant had not totally left the borough:—he was only absent about four months." Now the return is expressly to the contrary, for it states,—that he had departed with his family, and entirely left the same; and had continually abode, resided, inhabited and dwelt with his family, out of the borough. The Chief Justice, in his judgment, seems to have mistaken *non-residence* for *absence*. If a person usually resides in a place, but quits it for a short time, either with or without his family, still keeping his domicile in the borough, whereby he can be charged and assessed, and where he can be sum-

* Rex v. Mayor and Aldermen of Leicester, Burr. iv. 2067.

moned,—this is only *absence*. But if he abandons his dwelling, takes away his family, and removes his domicile to another place,—this is not absence, but non-residence: he leaves one place of residence and adopts another.

Domesday.
Northamptonshire
and
Leicestershire.

The case in question was not, properly speaking, so much a cause of removal, (as said by Lord Holt, in *Vaughan v. Lewis*, Carth. 227,) as an actual abandonment of all rights of a burgess, and all privileges belonging to that character.—Therefore, when that fact had been established before the mayor and aldermen, they were justified in treating the applicant as no longer a burgess; but absolutely out of his office.—In truth, the same as if he had been dead. No summons of him could be necessary, as reason plainly dictates; because he could not be compelled to come; for he lived out of the borough, the officers of which had no power to summon beyond the limits:—therefore, for every practical purpose, the proper mode of considering the case was,—as one of absolute desertion of the office.

The intention stated in the return was needlessly and improperly added; for, if he had actually left that place, and resided in another,—it was immaterial what his intention was, and that allegation ought to have been rejected as surplusage. Nevertheless, Mr. Justice Yates seems to have rested his judgment upon it, as he asks, “How can the corporation know his intention? How did they know he did not intend to return? He might have altered his intention.” To which interrogatories the answer is,—that they did know his intention, as far as it was necessary to be known—for they knew that he had actually left the borough. And as to his intention to return, or of his having altered his mind, it was totally immaterial; for, if he did either the one or the other, he must have come in again as a fresh inhabitant, and have been re-admitted.

Lord Mansfield also added, that “they had never asked him, or given him notice of the charge.” This observation is founded upon two erroneous assumptions,—first, that notice ought, or could have been given; and 2dly, that any charge was necessary to remove him. The fact was, he had actually

Domesday. removed himself, and made a vacancy in the office by withdrawing himself from the borough. On the grounds therefore suggested by the court, it is submitted, that this judgment cannot be supported.

**Northamp-
tonshire
and
Leicester-
shire.**

There is, however, one point which might perhaps have afforded a solid ground upon which the case could have been determined. The legal rights and obligations of many classes of persons are frequently changed under the law, by actual residence for a year and a day; and therefore, if the court had said, that not having resided a year and a day away from the borough, he had neither thrown off his old rights there,—nor adopted new ones, in the place of his recent residence—he was not removed from his office, unless he disclaimed it—the case would have been decided upon a plain practical ground, and such a decision might have been useful for a future guide, as in accordance with the general law,—and in conformity with the entries we have before seen in the books of this borough. A committee of the House of Commons adopted the same principle, in the case of Newcastle-under-Lyne in 1703.* There are also other places respecting which similar determinations have been made,—and other occasions upon which the same doctrine has been recognised.

There is another case relating to Leicester,† but which contains nothing material to the subject of our present inquiry, excepting that it recites the charters of Edward IV., Henry VII. and Queen Elizabeth: and there is also in the statement of that case, some of the confusion of burgesses with freemen, upon which we have before commented. Both those classes could not exist as separate bodies in the borough: the fact being—that the *condition of a freeman* is only a *qualification* for being a *burgess*, if *the person lived within the borough*. The charters all tend to show, that there was only *one class originally existing*—and *one class subsequently incorporated*—which were the *burgesses*: that is, the *inhabitant householders paying scot and lot*,

* See Journal, p. 315.

† Blankley v. Winstanley, Term Rep. iii. 279.

presented, enrolled, sworn, and admitted at the court leet: Domesday.
—and they only were entitled to the privileges of the Northamp-
tonshire
and
Leicester-
shire. place.

This is the clear and intelligible result of the investigation we have thus made, in detail, of the boroughs of Northampton and Leicester.

WARWICKSHIRE.

WARWICK,

TAMWORTH.

In the county of Warwick there were two parliamentary Fol. 338. boroughs, Warwick and Coventry, besides Tamworth, which last is partly in Warwickshire and partly in Staffordshire.

Ten *burgesses in* Tamworth (clearly establishing it to be a borough in that time) are entered under the king's land, as belonging to the manor of Coleshelle.

WARWICK.

The entry as to Warwick, which precedes the list of the Fol. 238. tenants of the county at large, describes it as a *borough*; and states, that the king has 113 houses, and the king's barons 112, of which the king hath all his geld. Then follows an enumeration of the *masuræ* which each of the barons possesses, amounting altogether to 115—four of which are stated to be waste on account of the site of the castle. Besides these, one house is mentioned—and 13 belonging to other barons. But nothing is said, with respect to these houses, as to any burgesses; although 19 burgesses are mentioned as having 19 *masuræ*. There is therefore a clear distinction between the houses and the *masuræ*: the latter seem each to have their burgess; the former, probably, had not, on the ground we have mentioned before—either of their being held by persons who were exempt from borough duties; or excused by their poverty; which the occupier of a *masuræ* could not well be; as it was a house

Domesday. with land annexed to it. The 19 burgesses entered immediately afterwards as having 19 masuræ, clearly prove that they were householders; and they are described as having soc and sac. "There is sac and soc"—that is, a jurisdiction of their own—which they had enjoyed from the time of King Edward, again showing,—that at this early period exclusive jurisdiction was one of the characteristic privileges enjoyed by boroughs; and inhabitant householders the persons who enjoyed them.

Fol. 242. Amongst the possessions of *Hugo de Grentemaisnil*, in Merseton, in Ramelay hundred, is an entry of two Frenchmen there; and two *burgesses*, in Warwick, render 16*d.*; and in Billeslie, one house in Warwick—confirming the inference, that the burgesses resided in Warwick. Particularly as in the next entry, of Pilardetune, there is mention of one masura (one of the baron's houses mentioned before) in Warwick, which rendered 4*d.*

It is impossible not to assume, that this was the description of a house locally situated in the town of Warwick, rendering rent to the manor of Pilardetune.

Fol. 242, B. The same occurs in Tiheshoche, in Fexhole Hundred, as to the houses of Robert de Stratford in Warwick; and those of Ralf de Limesi, as to the manor of Becclelove; and William, the son of Corbucion, as to the manor of Burlie:—from whence it appears, that, although the houses were in the borough, they were held of the several manors under which they are here entered, and were not held by burgage tenure.

Fol. 244. The entry of Haselove is thus:—"These two Frenchmen and one burgess pay 7½*d.*" But it does not appear where the burgess lived:—it only states, that he paid so much to this manor—probably he was a burgess of Warwick; as we have seen, that Warwick and Tamworth are the only boroughs mentioned in this county.

TAMWORTH.

Ten *burgesses* in *Tamworth* are described as belonging to the manor of *Coleshelle*:—indicating, that although the burgesses held their lands or houses of this manor, they resided

in Tamworth:—the residence making them burgesses of that place. Domesday:
Warwick-
shire.

Two persons who held lands are described as freemen, “ et liberi homines fuerunt.”

Many freemen are mentioned as tenants; as well as other individuals:—some as holding their lands freely. The same form of entry occurs through the whole county.

Women are also described as free.

And it should be observed, that those who are called freemen, are not belonging to any borough or corporation, but are entered in the county at large.

COVENTRY.

Coventry, which is now a borough, is not mentioned as such in Domesday; but only as one of the possessions of the Countess Godiva.

STAFFORDSHIRE.

STAFFORD.

In this county there were three parliamentary boroughs— Fol. 246. viz. Lichfield,—Stafford,—and Newcastle-under-Lyne,—besides Tamworth,— which is partly in Warwickshire. Of these, only one—viz. Stafford,—is expressly mentioned as a borough; the entry of that place occurs separately from the county, and before the lands of the king.

STAFFORD.

It is described as a *borough*; and, amongst other things, it is said, that the king hath in his demesne 18 *burgesses*, and eight waste manses—apparently connecting together the burgesses and the manses, as has occurred previously in the entry of Warwick. Eighteen other *burgesses* in Stafford are entered in the possessions of Earl Roger, as belonging Fol. 248. to the manor of Mertone.

Amongst the lands of the king, the entry as to *Wigetone* Fol. 246.

Domesday. mentions *four burgesses*, and that as to Draitone eight *burgesses*, in *Tamuorde*;—from whence it appears,—that the burgesses of that place, like many others previously mentioned, though tenants or dependents of other manors, were yet called burgesses of the boroughs where they resided; for these entries describe them as being *in* the borough—thereby showing they were inhabitants of the place:—and negating, that it was in right of their tenancy, or dependency, that they were burgesses.

Stafford-shire.

Tamworth however must, by some means, have ceased to be a borough before the 9th year of the reign of Edward II.; because, at that time, the sheriff of Stafford returned to a writ—which required him, amongst other things, to certify how many boroughs there were in his bailiwick—that there was only one—namely, Stafford.* Probably Tamworth had ceased to be a borough before the reign of Henry III.; for it is not mentioned amongst the boroughs which, in the 49th year of this king, returned members to the Council of De Mountford; and, in the 7th year of his reign, in the roll of a talliage, in which Stafford is mentioned as a borough, Tamworth is called “villata.”

Fol. 248, B. There is a passage in the survey of this county which may require an observation—as Brady and others have been led into error respecting this, and similar entries. Henry de Ferieres is stated to have “a castle of Toteberie in the borough,”—apparently separate from each other—as we have had frequent occasion to assert.—It is then added, “about the castle there are 42 men, living on their own merchandise, (*de mercato suo*,)” which has been rendered as if they were *homines de mercato de Toteberie*. Brady translates a similar passage, to meet his own views respecting guild merchants, as describing “*men belonging to the market*.”† It must be obvious to the reader, that each of these translations is unwarranted by the text, which merely imports, that they lived from their own trade or merchandise.

* Vide post., Hist. of the borough of Stafford.

† Bra. Bur., p. 20.

Of the parliamentary boroughs in this county, one only is described as a borough—the burgesses only of another occur—the third is merely named—and the fourth, not mentioned at all. As far as can now be ascertained, the right of election in these boroughs, and the date of the several determinations, were as follow.

	First returned.	Date of determination.	Rights.	Last determination.
Stafford.	28 Edward I.	1710.	Sons of burgesses and apprentices' right to freedom.	Charters.
		1722.	Mayor, aldermen, and burgesses resident.	
		1724.	Occasional burgesses not entitled.	
Lichfield.	33 Edward I., one intermitted.	1701.	Bailiffs, magistrates, freeholders of 40s., burgage tenants, and freemen enrolled in the new book of the Taylors' Company, and paying scot and lot.	1 Edw. VI. 1 Mary.
		1718.		
Newcastle-under-Lyne.	28 Edward III.	1624.	Mayor, bailiffs, and chief burgesses, used to return.	Freemen resident.
		1704.	Agreed—mayor, bailiffs, and burgesses, and sons of freemen, whose fathers resided and have <i>never been absent a year and a day</i> , and apprentices demanding to be made free <i>within a year</i> after their apprenticeship.	
		1706.	Agreed—mayor, bailiffs, and burgesses, or freemen residents.	
		1792.		
Tamworth.	5 Elizabeth.	1670.	Select body.	Inhabitants—scot and lot.
		1698.	Inhabitants—scot and lot, and freeholders.	
		1722.		

From this table it appears, that at present the voters in all of them ought to be *resident*; but there is only one where all the residents, or inhabitants, are voters—namely, Tamworth—which is the one, comparatively speaking, of the most modern date, as a parliamentary borough. If in any case it could be said, that the right of election was given by

Domesday. the charter of the crown, it would be in this ;—because Tam-
Stafford- worth never had returned members to Parliament before
shire. the charter, but did immediately after ; and yet,—notwith-
standing there was one determination, giving the right to
the select body—and another, including the freeholders ;—it
has eventually been brought back to its proper and legitimate
channel, and vested in the *inhabitants paying scot and lot*—
both the former usurpations being rejected.

Stafford, which is *the most ancient borough*, has no trace
of having exercised a burgage-tenure right of voting ; but
is converted into a corporation borough.

Lichfield, which is not mentioned as a borough in Domes-
day, has assigned to it—amongst a variety of anomalous
rights of voting—that of burgage-tenure—upon the alleged
ground, that it was *an ancient borough*.

In *Newcastle*, where, in the reign of James I., the return
was claimed by the select body, the right of voting after-
wards passed through a course apparently connected with the
Court Leet, into a regular *corporate right of election*, by
the open conversion of the term *burgess* into *freeman*—those
words being first used, in the resolution of 1706, in the dis-
junctive—*burgess or freeman* ; and, in 1792, the former is
rejected altogether, and the word "*freeman*" alone re-
tained—although by the writ and precept, the return
" is to be of two *burgesses*, to be elected by the *burgesses*,
" out of themselves."

SHROPSHIRE.

SHREWSBURY.

In this county there were five parliamentary boroughs,
Shrewsbury—Bridgenorth—Ludlow—Wenlock—Bishop's
Castle—of which Shrewsbury is the only one mentioned in
Domesday.

SHREWSBURY.

The entry of Shrewsbury is separate from the county, and precedes the land of the Bishop of Chester—the king not appearing to have any land in demesne in Shropshire.

This place, like Leicester, is entered as a city; and there seems a difficulty in accounting for that name being applied to it, as there is no appearance of episcopal or ecclesiastical jurisdiction—unless the Bishop of Chester having possessions there, were sufficient for that purpose. Fol. 252.

It does not, however, seem to be a material distinction—because the burgesses are mentioned shortly after; and there can be no doubt, that with reference to the subject of our present inquiry—*cities and boroughs were substantially the same.*

In the time of King Edward, there is stated to have been “252 houses, and as many burgesses in the same houses, “rendering gable.” A decisive instance, in addition to those we have already mentioned, that the *burgesses were inhabitant householders in the borough.*

The entry afterwards repeats many of the provisions of the Saxon laws; and states—that when the king lay in the city, 12 *men*, of the best of the city, served him watching. And when he hunted there, the better *burgesses*, having horses, guarded him, with arms, &c.

There is one part of the entry which, as matter of curious research, may be mentioned, for the purpose of showing how watchful the ancient law was as to fire—for it even punished, in the owner of the house, an accidental burning. A matter in the present crowded state of our cities, worthy, perhaps, to some extent, of the consideration of the Legislature. The entry is, “if the house of a *burgess* should be burnt by any “accident or event, without negligence, he shall give to “the king, for forfeiture, 40*s.*—and to his two next neighbours, 2*s.* each.”

Part of the render of this borough was paid to the sheriff. The entry then proceeds:—

The *English burgesses* of Shrewsbury say,—that much

Domesday. injury is done to them, because they render as much *geld* as they rendered in the time of King Edward—although the Castle of the Earl hath occupied 51 *masuræ*, other 50 *masuræ* are waste:—and 43 French burgesses hold *masuræ*, paying *geld* in the time of King Edward. The Earl himself hath given to the abbey which he makes there, 39 burgesses, formerly likewise *geldable* with the others. In the whole, there are 200 *masuræ*—seven less, which do not pay *geld*.

Shrop-
shire.

This entry affords another instance of the separation of the castle from the borough, in respect of which it is alleged, —that the *geld* of 51 *masuræ* ought to be deducted from the *geld* of the borough, because they were enclosed within the castle. The same entry supplies us also with an instance of an exemption claimed for lands which were given for ecclesiastical purposes; and at the close of that part of the return which relates to the borough, it appears—that many *masuræ*, as well as houses, were exempt from the payment of the *geld*,—in all probability on account of the grounds of exemption, to which we have so frequently before referred.

The Bishop of Chester is stated to have *in* Shrewsbury 16 *masuræ*; and *as many burgesses*, who pay *geld* with the other burgesses—there are now of them 10 waste, and the other six render 4*s.* 7*d.* The same bishop has in the same city 16 canons, and they do not pay *geld*; nor is it known how much they render to the bishop.

Here we have an instance of both species of ecclesiastical property, belonging to the bishop:—one which paid *geld*,—and the other which did not;—the former in the possession of the *burgesses*; the other of the canons, who were persons dedicated to religion.

In the city of Shrewsbury, Earl Roger is making an abbey, and gives to the same the monastery of St. Peter, where was the *parish church* of the city, and so much of his burgesses and mills as render 12*l.* to the monks.

It should be observed, that this appears to be the first instance in which a *parish* is mentioned; and from the entry

it is clear, that the lands which the *burgesses* occupied,—^{Domesday.} though the rent was given to the monks,—still continued to ^{Shrop-} pay geld, and the occupiers to be *burgesses*.
shire.

There is a subsequent entry of nine burgesses in the city, ^{Fol. 260, B.} belonging to the manor of Melam.

Upon this entry it is unnecessary to make any observations besides those already suggested.

C H E S H I R E.

CHESTER.

In this county only one borough is entered; viz. the city ^{Fol. 262, B.} of Chester, which is returned by itself, at considerable length, with many provisions of the Saxon laws.

Some of the lands belonging to Chester, are spoken of as being without the city; and the Bishop's borough is mentioned, for which it is difficult to account. The entry we have referred to in Shrewsbury, respecting fires, is in substance repeated—as it is said, “If the city was burnt, he from whose house it began made amends by three ores of money; and to his nearest neighbours 3s.”

In another part of the entry it is stated, there were 12 judges of the city:—and these were of the king, the bishop, and the earl. If one remained from the Hundred Court on the day on which it sat, he made amends by 10s. between the king and the earl.

The reader will not fail to be convinced, that these were the *jury* sworn at the court, whose more especial duty it was to attend there; and for their default they paid a larger fine than other suitors.

The County and Hundred Courts are both mentioned. The entry then concludes thus:—“The land in which is the church of St. Peter, which Robert de Rodeland claimed as thane land (as the county proved) never belonged to the manor without the city, but belongs to the borough, and

Domesday. "always was in the custom of the king and earl, as the Cheshire. "other burgesses."

We have here, therefore, a clear distinction between the manor which was without the city, and that which belonged to the jurisdiction of the borough; and that the consequence of being within that jurisdiction was,—that it paid all customs like the other burgesses. We may in conclusion observe, that from this latter part of the entry it is obvious—the city and borough were in substance the same:—at least with regard to the subject of our present inquiry.

Fol. 263, B. Ten burgesses in the city are stated as belonging to the manor of Wirreham; and eight to the manor of Claventone; and 15 to the manor of Dodestune.

Fol. 263. The church of St. John is stated to have in the city eight houses; and the church of St. Wereburgh 13 houses in the city, free from all customs.

The burgesses of two other boroughs are also mentioned in Domesday; 18 of Roelend, and six of Teneverdent. Of the latter nothing further is stated, but the entry of the former is as follows:—Earl Hugh held of the king in the time of King Edward, Engelfield, and the whole was waste. Edwin the earl held it when Hugh the earl received this; it was also waste. Now he has in demesne half the castle, which is called Roelent, which is the head of this land; there he has eight burgesses; half of the church, and of the mint; half of the mine of iron, wherever it is found in the manor; and half the water of Cloite.

The next entry states, that Robert de Roelent holds of Hugo the count, half of the castle and borough; in which the same Robert has 12 burgesses, and half of the church, and of the mint, and of the iron mine, wheresoever found; and half of the water of Cloith.

In the next column there is also an entry to the following effect:—In the same manor of Roelend is made a new castle, also called Roelend. There is a *new borough*, and in it 18 burgesses, between the earl and Robert as abovesaid. To the same burgesses are granted the laws and customs which are in *Hereford* and in *Bretville*, &c.

In the first part of the entry of the lands of Earl Hugh, ^{Domesday.} the castle and burgesses are so mentioned as to raise, at first ^{Cheshire.} sight, the inference, that the castle and borough were the same; but the subsequent mention of them both, in the entry of the lands of Robert de Roelent, destroys that inference, and confirms the doctrine we have before insisted upon,—of the castles and boroughs being separate and distinct from each other.

These entries of Chester and Cheshire are long and minute, but afford no further information upon the subject of our present inquiry, beyond that which we have collected from previous entries; although, therefore, the particular history of Chester, so conspicuous both in municipal and parliamentary litigation, is of great importance:—yet we shall postpone the investigation of it till a further opportunity, when it may be introduced with more advantage.

NOTTINGHAMSHIRE AND DERBYSHIRE.

NOTTINGHAM,

DERBY,

NEWARK.

In the entry of Derbyshire, there is little mention either ^{Fol. 272.} of any borough or burgesses. Derby, the only borough in it, is entered at the close of the return, with Nottingham; each being separate from the counties to which they belong.

It is only necessary further to remark, that it is not ^{Fol. 280.} divided as the preceding counties into hundreds, but, like Nottinghamshire, into wapentakes.

Of the boroughs of Nottingham and Derby, Nottingham is first given: they are both described as boroughs, and each as having many *burgesses*; Nottingham 173, and Derby 243, *residing* in the time of King Edward. Those in Nottingham had been reduced, in the time of the survey, to 120:—and those of Derby to 100:—and there were 40 minores.

Besides the above entries, we find in Nottinghamshire the

Domesday. king's villains mentioned ; and the Saxon laws introduced :—
 136 men are described as having dwelt there ; but at the
 time of the survey there were 16 less. The sheriff had
 built on the earl's land 13 houses, putting them into the
 tax of the old borough. So that it appears,—houses newly
 built there, were liable to the charges of the borough, in the
 same manner as the old.

Notting-
hamshire
and
Derby-
shire.

The land held by the church is entered as partly having its own soc and sac:—and of the other part, the king had the soc and sac,—which probably accounts for some of the ecclesiastical property, where the church had soc and sac, or complete jurisdiction, being free from the charges of the borough ; and others where the king had the jurisdiction, not being so. A part of this entry also establishes,—that some mansions had more than one house:—for it is expressly entered, that Roger de Busli had in Nottingham three mansions, in which are situated 11 houses, rendering 4s. 7d.

Fol. 280.

Again it is entered,—that William Pevrel had 48 houses of merchants, and 12 houses of knights ; and Ralf de Burun has 13 houses of knights: in one of them dwells one merchant ; and Radulph, the son of Huberti, has 11 houses ; in these dwell three merchants.

From these entries it appears,—that the merchants were entered separately from the burgesses ;—and so far from the merchant guild being the sole ground of burgess-ship, as has been assumed ; it appears probable, that the merchants were not burgesses:—for that is the primary signification of the passage:—and at all events, they were not the same as the burgesses ;—nor, from their number, could they be the whole of them.

We have in this place also the same entry as we had in Canterbury,* of many houses being situated in the ditch of the borough.

Fol. 280. This concludes the material part of the separate entry for Nottingham. After which follows that of Derby, which states the number of burgesses to be the same as we have mentioned

* See before, p. 81.

before. And in confirmation of our former position, establishes that the ecclesiastics were free from charge—by an entry, that in the king's demesne, there was one church and seven clerks who held two carucates of land freely. And in Chester another church of the king, in which six clerks held nine oxgangs, also free.

Domesday.

Notting-
hamshire
and
Derby-
shire.

The entry of the 40 other burgesses, who are described as *minores*, is difficult of explanation, as the expression occurs nowhere else, as far as we are aware, in Domesday; and there is nothing in the context, or the remainder of the statement, to explain the term. In the return for Yorkshire, under Ilbert de Laci's manor of Tateshalle, it is said, that he has there "*L. burgenses minutos*;" but neither in that passage, is there anything to explain the expression. However, as Tateshalle is entered only as a manor, we may assume—that these were not actually burgesses, having the usual privileges of that class; because they resided in Tateshalle, which does not appear to have been a borough. And as the entry in Derby places the 40 *minores* separately from the other burgesses, the probability from the whole is,—that the Tateshalle "*burgenses minores*" were not real burgesses, and that the "*burgenses minores*" of Derby, who are immediately followed by a statement of the number of houses which were waste, were burgesses, who had been so reduced by poverty, that they were unable to pay their full geld and customs, and therefore were not entitled to the privileges of burgesses.

Fol. 316. B.

This view of the case is somewhat strengthened, by an entry with respect to the city of York, which speaks of 50 inhabited mansions, nine less, between great and small; and 400 mansions not inhabited, of which the better pay *1d.*, and others less; and 540 manses are so waste, that they altogether render nothing. Afterwards, 48 small residences (*minuta hospitia*) are entered. So that it is obvious,—houses paid more or less, according to the state in which they were:—and in some instances, nothing. The inference therefore which we have adopted, appears to be amply justified—that

Fol. 298.

Domesday. from the earliest period of our history, some houses were discharged from contribution to the common stock; and on that ground,—their occupiers were excluded from the common privileges.

Nottinghamshire
and
Derbyshire.

Other properties are enumerated under this same entry, but they do not apply to the present inquiry; excepting that the Abbot of Bertone is stated to have in Derby, some possessions with sac and soc; which probably exempted them from all borough dues.

This concludes all that is material as to Derby. Some general provisions succeed,—similar to those of the Saxon laws,—and stated to be equally applicable to Nottinghamshire and Derbyshire.

After which, follows a singular enumeration of those who have sac and soc,—toll—and them; including persons both ecclesiastical and lay.

Nothing more relative to Nottinghamshire requires notice, excepting that Newark occurs; and though not described as a borough, the Bishop Remigius is said to have *there* in his demesne, 56 *burgesses*.

Fol. 283, B.

Retford is also named once or twice, but not as a borough. Besides these,—there is no further mention, either of any borough, or burgesses.

RUTLANDSHIRE.

Fol. 293, B. The short entry of Rutlandshire, also, speaks neither of boroughs, nor burgesses. Nor does there appear ever to have been a borough in this county.

But as it is followed by seven blank pages, it may have been left in some degree imperfect, which would account for its extraordinary brevity.

YORKSHIRE.

YORK.

In Yorkshire there were 14 Parliamentary Boroughs—York — Hull — Knaresborough — Scarborough — Ripon — Richmond—Hedon—Pontefract—Aldborough — Borough-bridge—Thirsk—Beverley—North Allerton—Malton. Of these none are described as boroughs, nor are the burgesses mentioned, excepting those of York. Of that place there is a long and minute entry, separate from the rest of the county, which it precedes.

It is described as a *city*, and its *citizens* occur once or twice. The *burgesses* are more commonly spoken of, particularly as joining in making the return.

It is said that there are six *shires*, besides the archbishop's. These, however, could not mean shires in the sense in which that word is now used. In fact "shire" was only the Saxon term for division, or district; and was, in some instances, applied to that over which the bishop or alderman presided; or even the priest:—for, before the term "parish" was adopted, the expression in use among the Saxons was, the *parish-shire*, or district over which the priest received the confessions of his flock. These "shires," therefore, were doubtless—districts or divisions of the city.

A house within the castle,—the residences of the canons,—and of four judges,* seem to be spoken of as possessing peculiar privileges. The bishop is described as having the full custom of his shire. To the varying grades of houses—the different rents of some—and the entire exemption from payment of others—we have before adverted in the entry of Derby. The burgesses *residing* in the city are expressly referred to. Houses in the ditch of the city are also men-

* The four judges are, in all probability, in conformity with the provision in the Laws of William the Conqueror, which we have before stated.

Domesday. tioned ; and, as some guide to the dimensions of the man-
Yorkshire. sions, we ought to note, that seven small ones are spoken
of as containing 50 feet in breadth. A house is also
described as taken into the castle.

This appears to be all that is material in the entry concerning the city. At the close of it however, it is added—that the earl has altogether nothing in the king's demesne manors ; nor the king in the manors of the earl : except what belongs to spiritualities, which appertains to the archbishop.

There is also a reference to laws,—similar to those of the Saxons,—which, in this entry, as well as in others, seem to be cited for the purpose of showing what fines, forfeitures, amercements, or reliefs, were due to the king.

In the subsequent entry of the county of York, and its ridings, there is nothing requiring particular observation.

LINCOLNSHIRE.

LINCOLN,
GRANTHAM,

STAMFORD,
LEEDS.

In the county of Lincoln there were five Parliamentary Boroughs:—Lincoln—Grantham—Stamford—Great Grimsby and Boston.

Fol. 336. Of these Lincoln and Stamford alone are mentioned as boroughs. Of Grantham, 111 *burgesses* ; and of Leeds, 80 occur ; and they are said to have existed in the time of King Edward. In Torchesey, 213 are stated to have all the same customs as those of Lincoln. Moreover, whoever had a mansion in the same town, gave neither toll nor custom going in or coming out. And if either of the burgesses wished to go elsewhere, and sell his house, he might do it. At the time of the survey there were 112 burgesses *dwelling there*, and 111 *mansions waste.*

The entries of Lincoln—Stamford—and Torchesey—all precede the survey of the county and the king's lands.

Lincoln is described as a *city*; and it is stated that there were, in the time of King Edward, 970 inhabited mansions, but that number is computed in English 100 for 120. There were also in the same city 12 *lage men*, having soc and soc. Fourteen persons (who seem to have been Saxons) are stated to have toll and them; and now there are as many men having soc and sac:—their names being all mentioned. Many individuals are described as having mansions in the city:—one as having his hall quit of all customs;—another as having his hall;—and one as having a mansion without the hall, whereof he has land gable. The manse of another is described as quit of all custom. A priest is said to have a manse with soc and sac; and Gilbert de Gaud the same, and one manse quit of all custom. Earl Hugh, and Roger de Busli,—each a manse with soc and sac. The Countess Judita, one manse without soc and sac. Remigius, the bishop, hath a little manse, with soc and sac, and toll and them. And upon this and other manses nothing is paid, except the geld of the king, *which they give with the burgesses*. Of three superior manses, there is one quit of all things; but two are in *geld* with the *burgesses*.

Domesday.
Lincoln-
shire.

Of the manses which in the time of King Edward were inhabited, there are now waste 200—English number, 1240;* and in the same numbering, 760 are now inhabited.

The under-written do not give geld as they ought:—their names are then enumerated.

Of the waste manses destroyed on account of the castle, there were 166:—the remaining 74 were waste without the bounds of the castle; not on account of the oppression of the sheriffs and the ministers, but on account of misfortune—poverty—and burning by fire.

Reference is again made to the provisions of the Saxon laws.

Three burgesses *in Lincoln* are stated to belong to the manor of Scotone.

This closes the entries relative to the city of Lincoln; upon which, after our former comments, it is unnecessary

* Sic orig.

Domesday. to make any further observation, except, that the *burgesses*
Lincoln- are twice expressly spoken of, as paying the *geld*.
shire.

STAMFORD.

Stamford—which in the time of King Alfred, was one of the five boroughs into which the Danes were distributed—is described as having consisted, in the time of King Edward, of 12 hundreds and a half. These seem afterwards to have been converted into six wards:—five in Lincolnshire, and six in Northamptonshire, which is upon the other side of the bridge. The survey here speaks again of houses being laid waste, on account of the castle. From which—and the numerous entries we have before quoted, describing the profits of the borough, as reduced by the building of the castle—not only is our position confirmed, that the castles were separate from the boroughs:—but it seems also certain, that, generally speaking,—the boroughs existed before the castles.

The 12 lage men, who were also mentioned in the entry of Lincoln, again occur in this. These were a class of persons, which we have seen, were recognized in the laws of King Edward the Confessor, and in the *Senatus Consultum de Monticolis Walliæ*. As their number was 12,—corresponding with the 12 judges of Chester,—there seems no reason to doubt, that they were the jury of the borough; and as such, were entitled to considerable privileges and exemptions. They appear however in Stamford, to be reduced to nine:—a variation which, in the early periods of our law, is not altogether unusual, with respect to the jury; and does not militate against the suggestion we have made, of their forming that body. They appear with the *burgesses* to have possessed a considerable quantity of land.

We find no traces of any decisions respecting the municipal rights of Stamford; but the *burgesses* are clearly defined by parliamentary decisions.

This place returned members to Parliament, from the 26th of Edward I.; with some intermissions in the reigns of Edward II. and Edward III.:—and a considerable interval before the reign of Edward IV.

A market was granted to the *men* of Stamford in the 14th of Henry III. Domesday.

In the 41st year of that reign, another charter was granted to the *burgesses* of Stamford, as to their debts and pledges; and their not being answerable for their servants. If they died intestate, the king was not to have their goods and chattels, but their heirs. Lincolnshire.
1230.
1256.

Stamford returned members to Parliament again, in the 12th of Edward IV. 1472.

In the 15th year of that reign, the king, in consideration of the affection he bore the borough, and to Robert Hansan, alderman, and the *burgesses commorant* there, granted a charter to the alderman, *burgesses*, and their successors, that they might hold sessions—have a gaol—and return of writs like the sheriff—with a non-intromittant clause, excluding him from interference. 1475.

The grant of the sessions was probably to enable them to try offences within the borough,—the statute of the 1st of Edward IV. having taken away, from the Court Leet, the power of trial.

In 1660, upon the Restoration, the return for Stamford was disputed. It appears to have been made by the alderman, as he was called before the House, to amend it according to the decision of the committee. 1660.
12 Car. II.

In the following year, the merits of the election were reported to the House, by Mr. Serjeant Charlton; who stated, that the question was—whether every *freeman* had a right to vote, or only such freemen as paid *scot and lot*. It was decided, that the *latter only* had the right. 1661.
13 Car. II.

This determination, in words imports to be limited only to the freemen; but if taken in its comprehensive meaning, according to the common law, it would at that time have included *all the inhabitants*; for the distinction of villainage had ceased,—and *all were free*. But, if the decision were then intended to be limited,—according to the usage of former periods,—to those who were free by birth or servitude, or who were proved to be so; it ought, afterwards, when those distinctions became altogether obsolete, to have been

Domesday. applied to *all the* inhabitants paying scot and lot. **And so** the litigant parties, and a committee of the House of Commons, seem to have considered in 1735; for at that time a report was made, respecting the right of election at Stamford; by which it appears,—the committee and all parties assumed,—that every person being an inhabitant, and paying scot and lot, had a right to vote:—the only question being,—whether the right was limited to *householders* or not. But the committee resolved, and the House concurred in that resolution,—that the right was in the *inhabitants paying scot and lot*.*

Lincoln-
shire.
1735.
9 Geo. II.

Here, therefore, we have another instance of one of the most ancient boroughs,—where the possessors of land *had* great privileges—in which it is said, that borough English prevailed—which returned members to Parliament from the earliest time—where there was a corporation—and freemen were recognised and exercised rights,—yet, eventually, it is determined,—that the real *burgesses* are the *inhabitants paying scot and lot*.

ESSEX.

COLCHESTER,

MALDON.

In the entry of the king's lands in this county, the *liberi homines* and *free women* are repeatedly mentioned—"liberi homines tenentes:"—and "liber homo sub rege."

The *villains* also frequently occur; and in one instance, a man, who is described as a *freeman* of half a hide in King Edward's time, is said to be now one of the *villains*, and to be reckoned amongst the *villains*.

Socmen also are spoken of—and the reeves or *præpositi* generally: particularly the reeve or *præpositus* of the king.

The *census* also is found occasionally. One borough only is mentioned amongst the king's lands, namely, *Maldon*.

* 22 Journ. p. 615.

Domesday.

Essex.

MALDON.

Of Maldon it is said, “in the same hundred (Maldon) the
 “ king has 180 *houses, which the burgesses hold.*”

Another strong corroborative proof, that the burgesses
 were the actual occupiers or householders.

It is then added, “there are 18 houses waste, of which
 “ 15 held half a hide and 21 acres, and the other men do
 “ not hold more than *their houses in the borough.*”

Mansions and their inhabitants are also mentioned in the
 survey of the county at large. And tenentes and milites are
 recorded in other parts by themselves.

COLCHESTER.

The entry as to Colchester is thus:—“In Colchester the
 “ *bishop* (of London) has 14 houses, and four acres, *not ren-*
 “ *dering* custom, except *scot*, and that not to the bishop.”

It is described as a borough, and it is stated—“in Col- Fol. 104.
 “ chester the bishop has 14 houses.”

Under the manor of Ruenhale there is an entry of one
burgess of Colchester.

The *burgesses* are said to have claimed five hides in Lux- Fol. 104.
 enhen to the custom and *scot* of the city; and the following
 are the *king's burgesses*, and render custom. After which
 294 names succeed, with their custom; as well as the cus-
 tom of 401 houses, which they hold.

Fifteen other burgesses are also mentioned, and the custom Fol. 106.
 rendered by each seems to have been a personal tax; for
 it is said, they rendered “*de suis capitibus.*” Some land
 paid no custom;—of some the burgesses rendered custom in
 the time of King Edward; but not now, except the custom
 “*de suis capitibus,*” or poll tax. Other houses, their owners
 and occupiers, and two other burgesses, are spoken of.

The common of the burgesses is described as containing
 fourscore acres of land, and about the wall eight perch, of
 the whole of which, by the year, the burgesses have 60s.
 for the service of the king, if need be; but if not, it is divided
 in common. It is stated a custom exists, that every year

Domesday. the *royal burgesses* render two marks of silver, which belong to the firm of the king; besides this firm every house by the year 6*d.* which was rendered for the support of the king's soldiers, or for expeditions by land and sea, and this is not at firm.

Essex.

This entry of Colchester requires no further observation, beyond those we have already made on other entries, excepting that we should remark the long enumeration of the *burgesses* and their *houses*, and the *distinct connection apparent between them*.

Fol. 107. We are unable to draw any important inference from the expression "commune burgensium," or the division of the profits in common; although other authors have much relied upon these and similar terms, as giving birth to some undefined notion of community or corporate privilege:—an inference, however, altogether unjustified; because no person could doubt, but that in all the boroughs, whether incorporated or not, there was a common stock for the support of the walls, roads and bridges, and the maintenance of the poor.

The general history of Colchester we shall postpone until another period.

MALDON.

The immediate connection between the *burgesses* and the *houses* is also observable in the entries for *Maldon*: where the 180 occupied by these burgesses are mentioned, and it is added "they held nothing but their houses."

Harwich is not described as a borough in the survey of this county.

Before we quit this return, we should observe, in confirmation of the position we have already suggested, that the houses and burgesses entered as belonging to different manors, were situated in the boroughs, though they were held of the manor, and accounted to it—that we have a striking instance of this in *Essex*, where seven houses in *London* are stated as belonging to the manor of *Turruck*, and included in its firm.

NORFOLK.

NORWICH,

YARMOUTH,

THETFORD.

In this county there were five parliamentary boroughs, Norwich—Yarmouth—Thetford—Lynne Regis—Castle Rising. Of these, only three are mentioned as boroughs in Domesday, Norwich—Yarmouth—and Thetford; neither of them occur, as in former cases, before the general entry of the county, which begins with the king's lands. Amongst Fol. 114. which, in Heinestede Hundred, it is entered, "In Framingham and Intreussa *two burgesses* of Norwich hold two acres of land." These burgesses clearly lived in Norwich; and held land only in these manors, without houses.

HUNDRED OF NORWICH.

In Norwich there were, in the time of King Edward, Fol. 116. 1320 *burgesses*, of whom one, named Edstan, so belonged to the king, that he could not recede nor do homage without his license:—he had 18 acres of land, 12 meadows, and two churches *in the borough*, and the sixth part of a third—and to one church belonged one house *in the borough*, and six acres of meadow,—this Roger Bigot held of the gift of the king.

Of 1238, the king and the earl had soc and sac, and custom; *over 50*, Stigand had soc and sac, and commendation; *over 32*, Herold had sac and soc, and commendation—of whom one was so *in demesne* that he could not recede nor do homage without his license.

The *burgesses* held 15 churches, to which belonged, in free alms, 181 acres of land and meadow; and in the time of King Edward, 12 *burgesses* held the church of the Holy Trinity—now the bishop, of the gift of the king.

There are in the borough 665 English *burgesses*, and

Domesday. *they render customs*; and 480 *bordarii* who, on account of Norfolk, *their poverty, render none.*

In that land which Stigand held in the time of King Edward, there now remain of the former *burgesses* 39,—and in the same land there are 9 mansions empty.

In that of which Herold had the soc, there are 15 *burgesses*, and 17 mansions vacant, which are in the occupation of the *castle*.

There are vacant 190 mansions, which are in the soc of the king and the earl—and 81 in the occupation of the *castle*.

Fol. 117. In the borough there are still 50 *houses* of which the king has not his custom. There then follows a list of 50 persons, describing their occupations, and how many houses they held.

Of the burgesses who dwelt in the borough of Norwich, 22 have departed and dwell in Beccles, the town of the Abbot of St. Edmund's—and six in Humilgar hundred, who have renounced the borough.

These flying, and the others remaining, are altogether waste: partly by the forfeiture of Roger, the earl—partly by fire—partly by the gelt of the king—and partly by Waleran.

Fol. 118. There is also an entry of the land of the burgesses.

The Frenchmen of Norwich.—In the new borough, 36 *burgesses* and six English; and, from the annual custom, each paid 1*d.* on account of the forfeiture. Of the whole of this, the king had two parts, and the earl the third.

Now 41 French burgesses in the demesne of the king and the earl—and Roger Bigot has 50—and Radulph de Bellafago, 14—Hermer, eight—Robert, the archer, five—Fulcher, the man of the abbot, one—Isac, one—and Radulph Wolf-face, one—and in the (pistrino) bakehouse of the earl, three.

Robert Blund and Wimer, one mansion waste.

All this land of the burgesses was in the demesne of Earl Radulph, and he granted it to the king, *in common*, to make a borough between him and the king, as the sheriff witnesses.

All these lands, as well of the knights as the burgesses, Domesday.
render their custom to the king. Norfolk.

There is also in the new borough a certain church, which the Earl Radulph made and gave to his chaplain.

YARMOUTH.

The entry of Yarmouth is as follows.

Fol. 118.

Yarmouth is in the Hundred of Flec; King Edward held it; and there were always 70 *burgesses*.

It was then worth, with two parts of the soc of three hundreds, 18*l.* numbered; and the part of the earl, 9*l.* numbered. Now, the two parts of the king, 17*l.* 16*s.* and 4*d.* sterling; and the part of the earl, 8*l.* sterling. The sheriff has 4*l.* and one male hawk.

The burgesses give these 4*l.* of income gratis, and from friendship.

THETFORD.

In the entry of Thetford five *burgesses* are mentioned, and two mansions are stated to be vacant.

But in the borough there were 943 *burgesses* in the time of King Edward.

The king has all custom.

Of these men, there were 36 so in the demesne of the king, that they could not be the men of any one, without the license of the king.

All the others could be the men of any one; but nevertheless the custom of the king always remained, besides heriots.

Now there are 720 *burgesses*; and 224 mansions are vacant. Of them, 21 *burgesses* have six carucates, and 60 acres, which they hold of the king, and were in the *soc* of St. Edmund. Besides this, two *burgesses* have one mill. Fol. 119.

In the *borough*, the Abbot of St. Edmund's has one church and one house *free*. The Abbot of Ely, three churches and one house free, and two mansions, and by custom they were in one house. The bishop, 20 houses free, and one mill, and half a church. Roger Bigot, one house free, and one monastery, and two *bordarii* at the monastery.

Domesday. In this entry of *Thetford*, the *vacant houses in the time of King William*, added to the number of the *burgesses*, make up the whole number in the time of King Edward, with the addition of one, which probably was from a new house having been built, as we see was the case at Norwich. This affords another decisive instance to establish that the *burgesses were the householders*.

As a small number only of them appear to have held land, tenure could not have been the qualification of all burgesses. The same 21 who held the land were in the the soc of St. Edmund's, which would also negative that the soc had any thing to do with burgess-ship—because otherwise all the burgesses would have been in the soc; and it would be a strange anomaly, that holding land in the soc of St. Edmund's should make the tenants burgesses of Norwich.

We should in conclusion observe, that the freemen, the "liberi homines," are mentioned throughout this return, amounting to 4277.

From the entry of *Yarmouth* also, it is clear, that soc and sac, were more particularly connected with tenure, and not with the character of burgesses—because all the 1320 were burgesses; but there are only 50 and 32 over whom particular individuals had soc and sac. Therefore, as the other burgesses were not so circumstanced, this could not be a necessary qualification common to all the burgesses. Nor did the fact of being in the sac and soc of another manor or land, interfere with their rights; for some of them were so, and some not:—and there were socs, as well without the boroughs, as within.

From the entry of Norwich it also appears, that tenure was not an essential part of the qualification of a burgess; for the holding of a part only of the *burgesses* is mentioned, which could not, therefore, be the common qualification. Had it been so, it would have been stated that all the burgesses held land:—but the rest do not appear to have any such possession independently of their houses.

As it has thus been shown, that the qualification of the

burgesses neither consisted in the jurisdiction which the lords ^{Domesday.} had over them, nor in their tenure under their lords—so it ^{Norfolk.} appears also, that the payment of custom was at least one of their characteristics; and that the *bordarii*, on account of their poverty, rendered no custom. This, therefore, was one of the facts at least which denoted the burgesses.

Their number corresponding with that of the houses, after deducting the vacant mansions, is also a striking circumstance, further confirming the conclusion before drawn from the entries of Huntingdon, Northampton, Colchester, Maldon, Thetford, in the same lands, and other places—that the *burgesses* were the *inhabitant householders*; and particularly that part of the entry of Norwich which speaks of the burgesses, who before dwelling in Norwich had removed to Beccles, and had renounced the borough.

Throughout the enumeration of the houses of Yarmouth, the *domos* are distinguished from the *mansuras*: the latter appearing sometimes to be land with a house upon it, and at others land where a house, now waste or vacant, had stood;—the former was probably in all cases an inhabited house.

SUFFOLK.

IPSWICH,
SUDBURY,

DUNWICH,
EYE.

In this county there were seven parliamentary boroughs, Ipswich—Bury St. Edmund's—Sudbury—Dunwich—Oxford—Aldborough—Eye.

Of these, only the first is mentioned in Domesday as a borough.

The burgesses of Sudbury—Dunwich—and Eye—occur.

No entry precedes the general return for the county, which commences with the Terra Regis.

Domesday.

Suffolk.

IPSWICH.

The entries relating to Ipswich are as follow :

- Fol. 289. In the *borough* of Ipswich, Stigand had two *burgesses* in the time of King Edward, with soc and sac, and the king had the custom: since, they are dead, and the king has custom and soc and sac.
- Fol. 290. Of half the hundred of Ipswich—of that land 12 *freemen, dwelling elsewhere upon their own land*, always held 70 acres, to the service and custom of the king, and of the borough.
- Two *burgesses* appertained to a grange near the borough, which, in the Confessor's time, had belonged to Queen Editha.
- In the borough*, there were, in the time of King Edward, 538 *burgesses* rendering custom to the king, and they had 40 acres of land. Now, there are 110 *burgesses* rendering custom;—and 100 poor *burgesses*,* who only paid 1*d.* per head. In the time of King Edward, 328 mansions were waste, which *scotted* (*scottabant*) to the gelt of the king.
- Fol. 304. Robert Malet has in the borough, one *burgess*, whom his ancestor had. The king has his custom.
- Fol. 314. Of the manor of Plegeforda, one *burgess* belonged to Robert Malet.
- Fol. 392, B. To the church of St. Peter, in Ipswich, belonged five *burgesses*.
- Fol. 393. Richard, son of Earl Gilbert, had 13.
- Fol. 402. In the time of King Edward, 41 *burgesses* had belonged to Robert Fitz Wimere, the commendation of 26 of whom was still in his son Suein, of Essex,—the others were dead at the time of the survey; but they had soc and sac, and the king had the other customs.
- Fol. 421, B. Roger de Ramis held St. George's Church, in Ipswich, with four *burgesses*.
- Fol. 438. Norman, the sheriff, had two *burgesses*—one in pledge, and the other for debt; but the king has his custom.
- Fol. 446. The son of Rolf, a *burgess* of Ipswich, is mentioned among the lands of the Vavassors in Suffolk.

* *Burgesses minores*. See before, Derby and York.

SUDBURY.

Domesday.

Suffolk.

The entry of Sudbury describes it as belonging to the **king**: 55 *burgesses* are mentioned as in demesne. Fol. 286, B.

This town had a market and moneyers.

In the Essex survey, in the manor of Walstede, the following entry occurs: Fol. 40, B.

In Sudbury, five *burgesses*, holding two acres.

Two *bordarii* and 24 foreigners paid rent to the manor. Fol. 311.

In the Confessor's time, there had been 120 *burgesses*.

At the survey, there were 236, besides 178 *pauperes homines*.

DUNWICH.

Eighty *burgesses* of Dunwich were attached to the manor of Alneterne, belonging to the abbey of Ely. Fol. 311, B.

EYE.

Edric held *Eye*. There were 12 plough lands in the time of King Edward. Now Robert holds it in demesne. Now there is one market, and one park. And in the market dwell 25 *burgesses*. To this manor there belonged 48 socmen, who had 121 acres of land. Of these socmen there were 37 in demesne, or the lord's vassals. Fol. 319, B.

The entry of *Ipswich* again confirms the identity of the *burgesses* with their houses; and establishes the point, that those only who paid the full custom of the place,—or in other words, the scot and lot,—were entitled to all the privileges of *burgesses*:—whilst the poorer classes were excluded. There were 538 *burgesses* in the time of King Edward, all of whom paid custom to the king; but at the period of the survey, 328 mansions are stated to be wasted, which in King Edward's time *scotted* (*scottabant*) to the gelt of the king; and 100 *burgesses* were poor, and only paid *1d.* per head. These wasted houses, the poor *burgesses*, and the 110 who paid custom at the time of the survey, make up the 538; and establishes, that the number of *burgesses* was reduced to the extent of the mansions which were vacant, and of those who were so poor as not to be able to pay

Domesday. the full custom,—or *scot*,—alluded to in the laws of William
Suffolk. the Conqueror. That such a payment, and under that name, was made by the burgesses of Ipswich, is apparent from the use of the expression in this passage, that these mansions before *scotted* to the geld of the king.

It is unnecessary here further to insist upon the point, that many of these burgesses held under other manors. But it should be remarked, that those who held land in Ipswich, but *dwelt elsewhere*, are not called burgesses, but *freemen*—that is, persons of *free condition*, as the holding of their own land indicated; but *not burgesses*, because they were *not residing* there, or in the simple language of that time, *freemen of*, or *belonging to*, the borough. Thus establishing both points,—of freedom and residence; that being a freeman was not alone sufficient to make a burgess, unless he also *belonged to*, or *resided in*, the borough.

In the entry of *Dunwich*, the 178 poor men are expressly distinguished from the 236 burgesses.

In the return of the manor of *Eye*, 25 *burgesses* are mentioned as *dwelling in the market*: which Brady,—anxious at all times to extract an inference supporting his doctrine, that burgess-ship was connected with trade, translated thus,—“to the market belong 25 burgesses:”—for which there seems to be no authority, either in the context, or the terms used. The words are “*in mercato manent xxv. burgenses.*” The expressions usually adopted in Domesday, as descriptive of that which belonged or appertained to any thing, are “*pertinent*”—“*jacent*”—&c. followed with the dative case. Here the preposition “*in*” is used with the verb “*manent*;” which throughout Domesday is applied to describe dwelling, or residence.—And as there appears nothing in any other part of the survey to justify the turn which Brady gave to the expression, or the position which it would appear he wished to maintain, we feel justified in rejecting it; and in adopting the translation we have given above.

We have now closed our extracts from this ancient and important record; and in conclusion must observe,—that

there is no mention of, nor allusion to any corporation:—William I.
 neither any thing to show that burgess-ship depended 1066.
 upon ancient demesne, or tenure of any description:—but
 the *contrary*. The frequent mention of “*free men*” through-
 out the returns for the counties, whilst they are rarely
 referred to in those of boroughs, is decisive to show, that at
 this period, as in the Saxon æra, the term “*free man*” was
 not descriptive of any person belonging to a corporation,
 but referred to that considerable class of the community, the
free inhabitants, who were spread, more or less, all over the
 country; and appear to have increased considerably at the
 time of the survey; as they did still more in the reign of King
 John.

Of the 34 counties included in Domesday, the “*Liberi homines*” are expressly mentioned by name in 14: and their aggregate number amounts to 10,067. In some, they are numerous; in others, but few. In the remaining 20 counties, not only are “free women” mentioned—which is decisive to show, that it was descriptive of free condition, and not of any corporate privilege—but also many persons of free condition are designated by other names, as “soc men,” “allo-diarri,” “censores,” “censarii.” The soc men being probably those free men, who held free lands by purchase or otherwise:—the alodiarii those who held free lands, which they received by inheritance:—the censores, and appellations of that description, those free men, who paid the taxes or cense. One or other of these names occurring in all the counties, with the exception of those in the south and west:—as Surrey and Sussex, Wiltshire, Somersetshire, Devonshire and Cornwall. In Middlesex and Hampshire, one *free man* only is mentioned.*

From the whole of this record therefore it is clear, that the description of “*liber homo*” was applied to the *class, station, and condition of life*; depending upon *birth*, and other circumstances:—and not to persons rendered free by any particular privilege or franchise relating to corporations or otherwise.

* See Sir H. Ellis's Abstract of the Population from Domesday, vol. ii.

William I. We proceed now to the few other records which the scanty materials of this reign afford for the illustration of our municipal institutions.

LONDON.

It is a remarkable circumstance, that a place of such great importance as *London* should not be entered in Domesday:— and that no return should be made of the proprietors or possessions within it.

Without bewildering ourselves in the early traditionary accounts of this place, it is sufficient to know, that as far back as authentic history extends, London is described as a place of the greatest eminence in the country. Tacitus mentions it by the name of *Londinium*;* and its Saxon name appears to have been "*London-byrig*:" importing that it was at that time a *borough*: as Canterbury was also called *Cantwara-byrig*, or the Borough of the Men of Kent.

800. Lambarde says, that as early as A. D. 800, it was governed by a *port-reeve*, or a reeve of the town. †

839. About the year 839, London was destroyed and burnt by the Danes; but was subsequently restored and rendered *habitable* by Alfred ‡ about the year 886; when he gave the custody of it to his son-in-law, Ethelred, Earl of Mercia; and appointed a person to be *alderman* over all London. §

994. It appears to have been walled in the year 994. As William of Malmesbury says, that about that year "the Londoners shut up their gates, and defended their king, Ethelred, within their walls, against the Danes." ¶

1014. In the encomium of Emma, daughter of Richard, Duke of Normandy, and Queen of England, it is said, "that Canute ordered the city of London"—which is described as the metropolis of the land,— "to be besieged, because the chief men of the land had fled there, and part of the army, with the greatest portion of the common people, as the city was most populous." ¶¶

* Vide Tac. † Lamb. Top. Dict. ‡ Stow, 8. § Stow, 8.
 ¶ Sax. Chron. 886. ¶¶ Stow, 15.

When Edmund Ironside was king of the Saxons, Canute the Dane brought his army to the west part of the bridge; and cast a trench about the city of London; and attempted to win it by assault: but the citizens repulsed him, and drove him from their walls.* 1016.
1041.

To evince the great importance of this city shortly after that time, it may be observed, that London is described in the Laws of Edward the Confessor, as “the head of the kingdom and the laws.” And the court of the king is there directed to be held in the *hustings* on Monday in every week.

Earl Goodwin, in 1052, sailed with his navy by the south end of the bridge, and so attacked the walls of the city.† 1052.

After William, Duke of Normandy, had landed in England, and defeated and killed Harold, he marched towards London, and coming to the south side of the river, near Southwark, he proceeded along that side of the Thames till he came to Wallingford, where he crossed, and then marched again towards London on the north. When he approached the place, Stigand, Archbishop of Canterbury, with the principal persons of the city (*principes civitatis*, as the historians say), came out to meet him, and surrendered themselves and the city to him. Before he entered, he directed some military defences to be made within it, remaining himself, with his army, in the suburbs.§ William I. 1066.

Although in this, and some of the preceding extracts, London is called a *city*, yet it does not necessarily follow that it was so named at that time:—because the histories, from which we have derived our information, were written long subsequently to that period; and in the charter which William granted to London, soon after he had obtained possession of it, (the original of which is said to be still extant in the archives,) there appears to be no mention of it as a city.

This charter is addressed to the bishop, *portreeve*, and all the *burgwara*,¶ or *the inhabitants of the borough* of London, French as well as English. Which raises a strong

* Stow, 8.

† Wilk. 206. 2 Inst. 327.

‡ Stow, 8.

§ See *De Gestu Gulielmi ducis Normanorum*, p. 144 & 150.

¶ Wara. Saxon—Men, or Dwellers.

William I. inference that the burgesses included all the *inhabitants*.

1066. Its principal object is to recognise the *freedom of the town*, and *the free condition of its inhabitants*:—which is effectually done by confirming to them the rights peculiar to *freemen*:—Of those, one the most important, was, that they were to be *law-worthy*, or *legales homines*: that is, persons entitled to the protection of the law as *freemen*: and, consequently, subject also to all the obligations of it. Forming the distinguishing characteristic between those who were of *free condition*, and those who, being *servi*, or of the servile class, were subject entirely to the controul of their lords; and were neither entitled to privileges—nor subject to duties,—distinct from their obligations to their immediate thanes or superiors. The charter, therefore, declares the inhabitants of London to be law-worthy, and recognises them as such in the days of King Edward.

It has already been seen, from the Saxon Laws, that the consequence of individuals being treated as “law-worthy,” was, that they were bound to the law within their own particular district, and were there pledged to the due performance of all their public functions—their allegiance to the king—and their duty of keeping and maintaining his peace.

As another distinguishing feature of *freemen*, the king recognises their free right of *inheritance*. A right, which, from the very nature of their condition, the *servi* and *villani* could not enjoy:—for, they could neither have land, nor goods, of their own:—and, consequently, could have nothing for their children to inherit. On the contrary, the very essence of the character of a *freeman* was, that he might hold and enjoy his own free tenement. It appears to have been one of the earliest provisions of the social compact; as found in almost every state; and undoubtedly communicated to us from all our ancestors—as well the Romans, as the northern invaders,—that he who possessed property should have the right of transmitting it to his heirs: and that they, as free persons, being born of free parents, should have the power of inheriting from their fathers. Therefore, the king grants

to the free inhabitants of London, that "every child should
" be his father's heir." William I.
1066.

The charter then proceeds—in return for the allegiance which the *freemen* swore to the king—to give them the protection which the king owed to them. And consequently he says, "he will suffer no person to do them
" wrong."

It is perfectly in accordance with the simplicity of the ages to which we are alluding, that privileges so important—extensive—and valuable,—should be contained in the few words of the following charter.

"William the king, friendly salutes William the
" bishop, and Godfrey the *portreeve*, and all the bur-
" gesses within London, both French and English. And
" I declare, that I grant you to be all *law-worthy*,* as
" *you were in the days of King Edward*; and I grant,
" that every child shall be his father's *heir*, after his
" father's days. And I will not suffer any person to
" do you wrong. God preserve you."

This charter is not among the *chartæ antiquæ* in the Tower of London:—but the citizens of London are said to have it in their possession.

The *portreeve* is the king's officer, or reeve of the *town* (Saxonicè—*Porte*), as the *sheriff* is the reeve of the king for the *shire*.

Fabian, in his chronicle, mentions a very ancient register, or *Dom-Boc*, which, in his time, was preserved with the utmost veneration in the archives of the city of *London*:—and in which the names of the *portgereves*, together with the laws and customs of that city, were recorded. This he says was not written on a roll, but consisted of a number of leaves bound up together in the form of a book.†

King William also granted another charter to the citizens

* The translation adopted above, that the inhabitants were to be "law-worthy," is questioned by Mr. Hardy, who is likely to be accurate on this as well as other subjects; but still, considering the nature of the Saxon and Norman laws, it seems most probable that this, or a similar meaning, should be the real interpretation of the charter.

† See Introduction to Ayloff's Calendar of Charters.

William I. of London, which requires explanation, and may afford some inferences to illustrate our general subject. It contains a grant of land to the people of London, and is therefore properly addressed to the *bishop*,—that he may claim no ecclesiastical jurisdiction or dominion over it, or at least may regulate his claims subserviently to the king's charter. It is also addressed to the *sheriff*,—because he, as the king's officer in the shire, had it not been for this charter, would have had to account to the king for the issues of the land. It is addressed likewise to the *thanes of East Saxony*,—that is, the nobles or barons—that they might not exercise their dominion or lordship over this land, as having been granted by the king. The charter is made in the most general words to the "*people*." And it would be difficult to say, that this term could receive any other construction, than that the whole body of *inhabitants* (subject only to the qualifications we shall hereafter point out) were the objects of the grant. The following is a copy of the charter:—

" William the king, friendly salutes William the *bishop*, and Sweyn the *sheriff*, and all my *thanes* (or nobles) in East Saxony, whom I hereby acquaint, that pursuant to an agreement, I have granted to the *people*, my servants, the hyde of land at Cyd-
" desdune."

Under all these circumstances therefore—and considering that London is shown by these charters to have been the object of the bounty and munificence of the crown—it is very extraordinary that so little mention of it should be made in Domesday. There is no separate return from it:—and it is now impossible to account positively for this omission. The conjecture seems highly probable, that either some separate return was made—or that the king's profits of London were accounted for through some other channel. Royal dues must have arisen there, and an account of them must have been rendered. The difficulty now is to ascertain where and how this was done. But even if there were a separate return for London itself:—it is still extraordinary that the borough should not be mentioned, and

the burgesses should occur only twice,—and that in the survey of Surrey:—where in the king's lands, under Brixton hundred, 13 *burgesses in* London are spoken of as appertaining to the manor of Bermondsey. Again, under the lands of the church of Lanchei, it is said, there are 19 *burgesses in* London. These entries, however short, seem strongly to confirm the inference before drawn from those relating to many other places; that persons residing in the borough were by their residence burgesses, although they held lands belonging to distant manors.

Before concluding this reign the reader should be informed, that many charters were granted to ecclesiastical bodies by William the Conqueror;—which, although they will not tend to show what boroughs were, may enable us to ascertain some of the privileges which did not constitute them. The charter to the abbey of *Evesham* granted *sac and soc*,* to which such frequent reference is made in Domesday. Many authors have considered that those privileges were characteristic of boroughs, and they have been thought to include both civil and criminal jurisdiction. If it were so, they would probably have given the same rights that boroughs enjoyed:—because places possessing them would then have had a perfect jurisdiction within themselves, and the *sheriff* would have had no reason to interfere with them. But the fact is, as (many of the passages we have quoted from Domesday demonstrate,) that this liberty gave only that civil jurisdiction which the lord had over his tenants; extending only to questions connected with the holding of their lands, and with what are ordinarily called Common Pleas. This was enjoyed with almost every manor, and in modern times, has been called the "*Court Baron*." But it did not extend to criminal matters. Therefore such manors were subject to the general interference of the sheriff as to pleas of the crown, which were within his particular jurisdiction at the *tourn*. The duties of the suitors at these respective courts were clearly distinguished from each other—the latter relating to pleas of the crown—the keeping the peace—giving pledges for good

* 2 Dug. 582.

William I. behaviour—and binding themselves by oaths of allegiance to the king and the laws, which was emphatically called “*suit royal*,” as due to the king and his crown. Whereas the service at the court baron, described by sac and soc, related only to suit of court; soc being the liberty of separate and distinct jurisdiction, and sac the privilege of taking the issues and profits of the court.

Sac and soc alone were, generally speaking, at first only granted to the ecclesiastical bodies; and not the court leet, or exemption from suits of shires and hundreds, as in the case of Evesham; and as that place was not then a borough, it decisively proves, contrary to the assumption of Brady, that these were privileges not peculiar to boroughs. On the other hand, some of the possessions of the church were altogether exempted from the jurisdiction of the sheriff, and had powers excluding his interference, in the same manner as the charters granted to boroughs; but as the property belonged to ecclesiastical jurisdiction, though the sheriff was excluded, yet they were not boroughs. Thus Beverley had such a charter, but was not made a borough till a much later period.

Battle. A charter was granted by William the Conqueror to the Abbey of Battle, which became a subject of judicial investigation in the case mentioned in the note.* It directed that the abbot should have his own court, with full jurisdiction; free from all interference of the bishop, as *Christchurch at Canterbury*; and gave sanctuary—freedom from *geld and scot*—*hydages*—*dane-geld*—repair of bridges and castles—and from all pleas and suits of shires and hundreds—with sac—soc—toll—them—and *infangthef*. This charter was confirmed by Henry I. and succeeding kings.

Henry VIII. granted the manor and hundred of *Battle* to Sir Anthony Brown; with power to hold views of frankpledge, court leet, hundred court, law days, sokes, return of writs, cognizance of pleas, and other rights, jurisdictions, powers, liberties, &c., as the late abbot, or any of his predecessors, had held or enjoyed in right of the said abbey.

* Will. I. Dug. Mon. 317. Rex. v. Pugh, Doug. 188.

Under the first grant of William the Conqueror, upon William I. proof in whom the manor and hundred by various mesne assignments were then vested—that the manor and hundred were co-extensive—that there had been a court regularly held within the manor till the year 1744—that by immemorial custom the *resiants* within the hundred had been returned to serve on juries out of it, and that no precepts had from time immemorial been issued by the high constable, it was held—after argument of a special case on the point, and the court having taken time to consider—that the *inhabitants* of the hundred were still exempt from being summoned on juries. Notwithstanding the several general affirmative statutes subsequently passed, requiring that *all* should serve on juries:—and notwithstanding no proof was given of the allowance of this privilege:—nor was Battle ever a corporate town, holding sessions of gaol delivery, or sessions of the peace:—and although the defendant had been found guilty at the assizes:—the court, nevertheless, ordered a verdict of acquittal to be entered.

Thus in a case in which no political interests interfered, a franchise, which had its origin in the reign of William the Conqueror, was supported in favour of the *inhabitants*, for whose benefit the charter was assumed to be granted:—Notwithstanding it appeared, as far as the evidence went, that the court which was the ground of the exemption had ceased for four or five years. It is obvious that this district, like boroughs and other privileged places having exempt jurisdictions, was relieved from the burden of serving upon juries without the hundred, because they performed that public duty at their own houses, by serving on the juries within their own district. When, therefore, they ceased to hold their own court within the manor—which it seems they had done from 1744—the ground of their privilege was at an end, and the privilege itself should have ceased also. But, nevertheless, the court supported it:—and the presumption is that it is enjoyed to this day.

As Christchurch, Canterbury, is above referred to, it should

William I. be observed, that in 780, there was a charter granted to Christchurch at *Canterbury*; which spoke of the head officer of the town, whom it describes—Aldhuni hujus civitatis *præfectus*,—a term in all probability borrowed from the Romans.*

To further illustrate this period, in which we find but few documents, we shall add two other charters; establishing what privileges were then usually granted to the possessions of the church.

Durham. This king, in the first year of his reign, granted, amongst other charters, one to the convent of Durham, regulating the election and amotion of the future priors and *brethren*:—and taking them and their possessions under his protection,—granted sac and soc, toll and them, infangthef, and *their court*; and that they, *with their men*, should be free of all payments, exactions, rents, tolls, and *all customs which belong to the crown*.

Rochester Church. The other charter of this king, grants to the church of St. Andrew's of *Rochester*, the manor of Stone, as freely as the Countess Goda had it, with all customs which are in English called soc, sac, toll, them, and infangthef.†

In another charter to that church by the same king, Rochester is called a city.

WILLIAM II.

1087.
to
1100.

We pass now to the reign of King William II.

Dr. Brady says, it wants not probability, though it does not manifestly appear, that this king granted large immunities to burghs, to secure them to his party, in order to protect his usurped crown.‡ But no such charters are now to be found; nor is there any trace of them, either by *inspeximus*, or confirmation:—in one or other of which modes, it

* See Somner's *Canterbury*, edit. 1640, p. 363.

† 1 Dug. Mon. 29, 6.

‡ Brady, 32.

seems more than probable, that all the charters which were William II. granted can now be traced.

This, therefore, is one of those gratuitous assumptions, in which historians too readily indulge; and in which Dr. Brady was, undoubtedly, by no means disinclined to participate.

It appears, on the contrary, that during the 13 years of this barbarous reign, the king was chiefly occupied in securing himself from the conspiracies of his opponents:—in acquiring and preserving his Norman possessions; and in struggles with his barons, and quarrels with Anselm. We therefore find, with reference to our present subject of inquiry, little to arrest our attention. The united testimony of all historians seems to concur in attributing to this reign, scarcely any alteration in the laws or institutions of the country.

HENRY I.

Henry I., who from the weakness of his title to the crown was anxious to ingratiate himself with the people, auspiciously commenced his reign by granting to them a confirmation of what were supposed to be, the laws of Edward the Confessor. He began with reciting, that the kingdom had been oppressed with unjust exactions—which it probably was the intention of this charter of liberties to obviate. 1100.

Considering the importance which has been frequently attached to the words "*common council*," gratuitously assumed to have originally described a select part of a corporation, it is not altogether foreign from our subject, for the purpose of shewing the early use of those terms to remark, that this charter or body of laws was made by *the common council* of the barons of the kingdom. The same

Henry I. expression, occurring before in the cases of Northampton and Leicester.*

The king then directs that the church shall be free; so that he will neither sell it, nor place it at farm: nor if the archbishop, bishop, or abbot, are dead, would he accept anything from the lord of the church, nor his men, until a successor shall enter upon it. And all bad customs with which the kingdom was oppressed, the king abrogated.

He established the rights of *heirs*; who were not to redeem their land, as they had done in the time of his brother; but were to pay only their proper reliefs.

Payments upon marriages were renounced. Heiresses and widows were to be protected, and their dowers secured.

Moneytage, which was not taken in the time of King Edward, was renounced.

All debts, and other dues payable to the king, are farmed; except the fee-farms, and some other matters.

And generally the exactions of his father and brother are disclaimed.

The laws of King Edward are frequently mentioned and confirmed.

The lands of certain knights are to be held free of all *gilds*:—which here mean all common payments; an application of the term which should not be forgotten. This charter is witnessed by the archbishops, &c., when the king was crowned.

London. After these provisions immediately follows a charter granted to the citizens of *London*; probably intended to propitiate that important body towards the new succession.

As this charter contains a more minute detail of the liberties and privileges granted to London, than those which have preceded it; and as the rights and usages of the metropolis will perhaps be found more effectual for the purpose of illustrating the general subject of our inquiry, as well as the histories of other particular places; it may be expedient to state the substance of it in detail.—

It granted Middlesex to the *citizens* of *London* and their

* Vide ante, p. 222.

heirs, at the *farm* of £300; and that the citizens *might place* Henry I.
whom they would of themselves, to be sheriff, and also one
to be justiciary, for keeping the pleas of the crown,* that
none other should be *justiciary* over the same men of London.
That the citizens should not plead without the walls for any
plea. That they should be free from *scot and lot*,—*dane-*
gelt and of murder:—and none of them should wage battle.
If any of the citizens should be impleaded concerning the
pleas of the crown, the *man of London* should discharge
himself by his oath, to be adjudged within the city. No one
was to have lodging assigned him within the walls: nor any
one of the king's household, nor of any other, have lodging
assigned to him by force. That all the *men* of London should
be quit and free, with their goods throughout England, and
the ports of the sea—of *toll*, *passage*, *lestage*, and all other
customs. That the *churches*, *barons*, and citizens should well
and peaceably have and hold their *sokes* with all their customs.
That the guests who should be lodged in the *sokes* should
give *custom to none but to the king*, and to him *whose soke* it
should be, and to his *officer* whom he should have placed there.
That a man of London should not be adjudged in amerciements
of money, unless for his *Were* of a hundred shillings—(I speak
of the pleas which appertain to money.†) And further, that Sec. 1.
there should not be *miskennin*g in the *hustings*, nor in the *fol-*
mote, nor in any other pleas within the city. That the *hust-*
ings should sit once in a week, that is to say, on Monday.
That the citizens should have their lands, securities and
debts within the city and without. That the king would do
them right by the law of the city, of the lands concerning
which they should appeal to him. That if any one took toll
or custom of the citizens of London, they should take of the
borough or town, where *toll or custom* was so taken, so much
as the man of London gave for toll, and as he received
damage thereby. That all debtors who owed debts to the
citizens of London, should pay them there or else discharge
themselves there that they do not owe them; but if they

* See also the *Leges Burgorum*, chap. 63.

† So the original.

Henry I. would not pay, nor come to clear themselves that they did not owe them, then the citizens of London to whom the debts should be due, might take, in the city of London, the goods of the *borough or town*, or of the county wherein he dwells who should owe the debt. And that the citizens of London should have their chaces to hunt as well and as fully as their ancestors had, that is to say, in Chiltre, and in Middlesex, and Surrey.

This charter produced a striking peculiarity with respect to the city of London, that it had the extensive bailiwick of Middlesex united with its own;—which may probably account for their afterwards having a varying number of sheriffs; as in this reign we find they had four—in the commencement of the reign of Henry II., two—and in the 4th of his reign, five.* It is also a decisive proof that *London was not at that time incorporated*, and that *this charter did not incorporate it*—nay, even that the doctrine of incorporation, or taking by succession, was not then known. For Middlesex is granted to the citizens of London, and to their *heirs*:—not to their successors.

Hume. Hume, in his history, takes upon himself to assert, that this charter was the first step towards rendering London a corporation; for which—from the nature of the charter, and the observations we have before made—the reader will observe there is not the slightest foundation; but it is from these, and many other similarly hasty and unfounded assertions, that historians—lawyers—and even the courts—have been misled into the assumption of the early existence of corporations.

As Middlesex was granted to London, it was necessary that a sheriff for it should be provided; and therefore the charter proceeds to enable the citizens to choose a sheriff from themselves:—and also a justiciary for keeping the pleas of the crown:—that is, a person who should preside as judge or steward in the tourn or leet. And the grant excludes all others from exercising those functions.

In order that they might have the full benefit of this ex-

* Mad. Fir. Bur. 165 and 166.

clusive jurisdiction, it is, as a necessary consequence provided, that they should not plead without the walls. And that the sheriff, or other king's officer, might have no ground for interfering with them, they are discharged from paying to the king scot or lot—or dane-geld—or fines for murder. As they are exempted from other foreign trials, they are released from trial by battle, and are to be discharged upon their own oath by judgment in the city. They are expressly exempted from having guests forced upon them—from demands of toll—and other similar charges. They and their guests are protected in the enjoyment of their sokes or local jurisdictions; and regulations are made for the due holding of the hustings and folc-mote—the general administration of the law—with other provisions, giving full effect to the privileges intended to be granted.

Henry I.

Thus we have in this instance of London, a clear and distinct specimen of the nature, extent, and object of that exclusive jurisdiction, which was by this charter granted to the metropolis. We shall hereafter see, in this and succeeding reigns, numerous grants to other places, substantially similar in their objects and provisions.

In this first step of our inquiry it may be well for the reader to pause, and candidly consider whether it is possible for any prejudice or perversion to suggest a doubt, but that this charter was granted for the benefit of the persons *living in London*—the real *inhabitants* of the place. And that all who were capable of enjoying these privileges, and performing the duties arising from them, were entitled to the enjoyment of the one, and bound to the performance of the other; and that, neither the right nor the duty, could by possibility, considering the nature of the charter, attach to any person not an inhabitant of the city.

The laws of Henry I., in the midst of which the charter to London is introduced, then proceed to make regulations for the due and equal administration of justice.

Laws.

In the sixth section, with reference to the present inquiry, we ought to notice, that the hundreds—the decennas—and the pledges of the lords, are successively mentioned. The

Sec. 6.

Henry I. latter, relating to the small sokes, and exclusive jurisdictions of the lords, in which they were responsible for their dependents, were in some degree analogous to the decennæ, upon the principle which results from the extracts we have already made from the Saxon laws, with respect to the vicarious responsibility of the lords:—which we shall hereafter find expressly laid down in Bracton, the Mirror, and the Year Books.

Sec. 7. In the 7th section, amongst those who are to be present at the pleas of the counties, are classed the hundredors—

Sec. 91. the *aldermen*—and the reeves.

The shire-mote is to be held twice, and the hundreds or wapentakes twelve times, in the course of the year.

Sec. 8. In the section as to the holding of hundreds,* the “*freemen*” are mentioned. And in subsequent sections, villains.

Sec. 78. The 78th relates to the emancipation of servants, or villains, either in the church, the market, county, or hundred court. Inquiry is directed to be made *if the decennæ are full*; or who, how, and upon what account, they have *departed*, or have increased. A deciner is to preside over every nine men. One of the better men shall preside over the whole hundred, and be called *aldermon*,—who is diligently to endeavour to promote the laws of God, and the rights of man. From hence—notwithstanding the many conjectures which have been needlessly thrown away upon this point—we have a clear and distinct definition of the station, duty, and office

Alderman. of an alderman, in which we cannot be mistaken,—and which ought to be remembered in the further progress of our inquiry. Afterwards, the provisions of the Saxon laws, that every person above twelve years old, shall be in the hundred, and give his pledges, is repeated. And every lord was to give security for his men to do right. No one was to retain an unknown person or vagrant beyond three days, without security:—for which provisions, reference is made to the laws of Edward the Confessor.†

Sec. 9. The next section provides, amongst other things, that every cause should be determined either in the hundred court

* See also sections 68, 70, 76, 77, 85.

† See also sec. 20.

—county court—or hall mote of those having soc. Which Henry I.
 establishes the position we have before adopted, that soc
 referred only to the civil jurisdiction the lords had in their
 courts.

Immediately afterwards follows an expression decisively
 confirmative of this doctrine,—“according to the soke of
 “pleas, which each has in his own jurisdiction, of his own
 “men.”*

The pleas of the crown succeed. After them, the pleas Sec. 10.
 relating to the church—in which, and in other places, *free-*
men are mentioned.

The different Weres and Forfeitures are also enumerated ; Sec. 12.
 and those crimes which place the offenders at the mercy of Sec. 13.
 the king.

Also reliefs. Sec. 14.

There is a special section respecting dane-geld, which Sec. 15.
 should be observed, as illustrating the early use of the term
 “*guild*,”—it here meaning the payment of every hide of land
 under the laws of the Danes.

The 20th section, relative to soc, and toll, and them, Sec. 20.
 speaks of the *reeves* of *hundreds* and *boroughs*.

The 29th section provides, that the judges of the king Sec. 29.
 should be barons of the county where they have free lands.
 But *villains*, *cocseti*, and *pardingi*, or those who are inferior
 of this kind, and poor persons, shall not be numbered
 amongst the judges of the laws.

This description of the barons may probably account for the
 application of that term to the citizens of London, after they
 had the grant of the county of Middlesex ; and also to the
 members of the cinque ports, who always possessed consi-
 derable property in lands.

In the 41st section, which relates to forfeitures, there are Sec. 41.
 provisions made for the summons of those who have many
 mansions. One of them directs, that a party shall be sum-
 moned where he is *resident with his family* ; and the law is
 referred to, by which every lord is compelled to hold his Sec. 59.
 family in pledge.

* See also sec. 20.

- Henry I.** Provisions are made with respect to those who depart from their lords without license—and for those who hold of different lords, and who are resiant with the one whose lieges they are.* He whose resiant and liege any person is, and to whom his manbote is due, ought by right to have him to pledge against any others.
- Sec. 43.** The frank-pledge in boroughs appears to be referred to, under the term of *burgi lex*,—which seems a strong expression to show, that the court leet and view of frank-pledge, by which the law was administered in the borough, exclusive of the jurisdiction of the sheriff, were the striking characteristics of a borough.
- Sec. 51.** The 51st section provides for the essoigns, or excuses, for not attending the county and hundred courts.
- Sec. 54.** Section 54 contains directions for voluntary associations of persons having a common stock ; and provides, that if those who are so associated together, wish to depart from the society, they shall bring before witnesses whatever they have, to be divided in common ; and if it is necessary, they shall swear they have no more.
- From this section it is obvious, that societies having property in common existed at that time:—but it is equally clear, that they were entered into voluntarily, and could be dissolved at will. They do not appear to be designated by the name of guilds,—and were in no respects like corporations ; nor had any connection with boroughs or municipal governments.
- Sec. 55.** In the next section, reference is made to the men of the lords, who resided in remote manors ; of which we have cited many instances from Domesday. And it is provided, that a man of one manor shall not be obliged by the law to go to plead in another. After which the oath of fidelity is subjoined. From whence it appears, that persons were allowed to reside away from the manors of which they held ; but, that when they did so, they were subject to legal jurisdiction only *in the places where they resided*.

* Vide also sec. 55.

The 80th section relates to homicide in the court of the king—the army—borough—or castle. Henry I.
Sec. 80.

The 81st section relates to the giving king's peace in drinkings. It provides—that, in every drinking, whether given, bought, or paid for in common, (*dationi, vel emptioni, vel gildæ,*) or prepared for any one,—in the first place, let the peace of God and the Lord be given. Sec. 81.

This provision is to be accounted for by the habits of the times in which it was made: when the peace was preserved at convivial drinkings by legal enactments. In the early charters granted to London, as well as in those of many other places, special exemptions from *scotale*, or contribution for liquor provided for the king's household, are especially introduced. It may not be without excuse to add, as a proof of the general influence of these laws at that time, and of the traces which have continued of them to these days, that the place, the peace of which was protected by severe penalties in the time of our Saxon ancestors, was called "ealahur;" or, as the modern term is, "ale house."* For the regulation of which so many modern enactments have been made.

These laws conclude with a specific enumeration of the different forfeits to be made for bodily injuries. Sec. 93,
and 94.

Henry I., in the third year of his reign, held a council at St. Peter's in Westminster. Anselm, the Archbishop of Canterbury—the Archbishop of York,—and other prelates and abbots were present, as well as the earls and barons. Provisions were then made for the ecclesiastical government of the church, to which it is only necessary to allude, not being material to our present researches. 1102.

Councils also were held in London in 1106 and 1107. In the latter of which, regulations were made respecting the investiture of churches, and the election of priests. 1106, 1107.

In 1108, the king directed that all burgesses, and all who dwell in boroughs, should swear that they would preserve the legal coin, and not consent to its falsification. 1108.

In the same year, the king also granted another charter,

* Ll. Æthel. Tac. de Mor. Germ.

Henry I. directed to the bishop and barons of Worcestershire, that the county and hundred courts should sit at the places and times at which they sat in the time of King Edward; and not otherwise. And that all of the county should attend there.

In the same year a council was held, in which provisions were made for the celibacy of the clergy; and other ecclesiastical matters.

1116. In 1116, another council was held, at which a great tribute was given to the king; and it is said that frequent *gelds* were also paid at that time.

Other councils were held during this reign, which do not demand any comment.

The laws of Henry I., though considerably expanded—and detailed more minutely than those of the Saxons, or William the Conqueror—are still in effect and object the same; and, therefore, they do not require further illustration, than to observe that they were clearly of Saxon origin;—as they contain many Saxon terms; and they breathe the same spirit of liberty, and equal justice which characterised the institutions of our earlier ancestors. Nor can we believe, as asserted by many authors, that either the Conqueror or Henry I. made such changes in our institutions as is generally supposed. The probable explanation seems to be, that the barons and inferior officers of the king, or others entrusted with the administration of the laws, neglected those of Edward the Confessor, and allowed them to be disused; because the charters both of William and Henry seem to admit that fact: those kings, however, seem to have exerted themselves from time to time to restore them, and to censure their neglect. We may rest, therefore, satisfied, that the laws of Edward the Confessor were, at this time, considered of authority;—and, as far as the king could effect it, were practised during his reign.

Newcastle. Henry I. granted certain laws and customs to the burghesses of *Newcastle*; in which the *reeve* is mentioned, and provisions are made, that any questions moved in the borough should be there disposed of, except those which belonged to

the crown: *—that no burgess should plead without the town: Henry I.
 —and all pleas between burgesses and merchants should be determined within the third flux of the sea. If a burgess had a son in his house having his board there, he should have the same liberty as his father:—and if a *villain* should come to the borough to *dwell* there, and should hold land within the borough for a year and a day, without any claim of his lord, he might remain there for any time as a *burgess*. *Foreigners* are spoken of: and every burgess might sell his land, and go where he would. The burgesses also were exempted from trial by battle;—and their burgages are mentioned—it is also said, the forfeiture of a burgess towards the reeve ought to be common. Certain exemptions and privileges then follow: and there is a provision respecting the assize of bread and beer: the forfeiture to the reeve—and for a third fault, the offender was to be punished *by the common council of the burgesses*.

The provisions as to the villains, seem to be copied from the *Leges Burgorum* of Scotland. † And we should observe, throughout this document, the marked distinction between *burgesses*, *villains*, and *foreigners*:—that the sons of burgesses, being of free condition by birth, were entitled to the same privileges as their fathers:—that the houses in the borough were held by burgage tenure:—and that some of the forfeitures were to be imposed by *the common council of burgesses*:—which, as we have observed before, means by *the common assent of the burgesses*, and not that it was the act of any select body, as the terms are applied in modern times.

In this reign there is also a document—*De tallio dando et accipiendo apud Novum Castrum, tempore Henrici Regis*—which after an enumeration of the different articles, and the payments for them, adds—“*Personæ Ecclesiarum barones et milites sint quieti de tollonio sue mense, et nullus alius.*”

Things sold *within* and *without* the town, are distinguished:—and the *burgesses* are mentioned at the close of the document.

* Ancient Register, Northumberland House. Fol. 125, B.

† Vide post.

Henry I. This king seems to have followed the steps of his brother
 1121. in compiling the Domesday Book of *Winchester*, called the
 Winton Dom Boc. "Winton Dom Boc;" and it appears to have been formed
 upon the oaths of 80 *burgesses*—no doubt of *Winchester*.
 A copy of this record has been recently made from
 the original, and is in the possession of the Society of
 Antiquaries.

However, notwithstanding it is very minute and particular
 in the detail of the landed possessions, there is no material
 mention of the city or *burgesses*, illustrative of our present
 subject.

Charters. There are some few charters of this reign, independently
 of that which we have already quoted, as granted to
 London.

Beverley. One to *Beverley*, by Turstan, Archbishop of York:—by
 which he granted—with the advice of the chapter of York
 and *Beverley*, and of his barons—to the *men of Beverley*,
 all the liberties which those of York had in their city.*
 He states, moreover, that King Henry had granted to him
 the power to do so; and by charter, had confirmed it.
 The archbishop further willed, that his *burgesses* of *Be-*
verley should have their manshus (or guildhall) that they
 might there dispense their laws, for the amendment of the
 whole town, by the same law of liberty as those of York had
 it in their manshus. There was added, a partial grant of toll.
 And upon particular days, all the *burgesses* were discharged
 from the payment of it; and free ingress and egress was
 given them, within the town and without. They were free of
 toll throughout Yorkshire, as those of York; and amongst
 the witnesses to this charter was Thomas, the *reeve*.

It will be seen, therefore, that this grant was made to the
men of Beverley; afterwards called the *burgesses*, as if the
 terms *men of the place*, and *burgesses of the place*, were, both
 in *Beverley* and York, synonymous.

This charter is afterwards confirmed, by one of the king to
 the *men of Beverley*, who are called the *burgesses*, according
 to the free laws and customs of the *burgesses* of York; and

* *Inspeximus* Charter of Henry II.

their guild merchant, with their pleas and tolls, and all their free customs, as Turstan had granted to them. From which, it will be observed, as will occur in numerous subsequent instances, that the grant of the guild merchant is separate from that of the privileges of burgesses. Henry I.

Henry I. also granted to his *men* of Chester and their *heirs*, Chester. that no one coming to the city should buy or sell but themselves and *their heirs*, or by their leave, excepting at markets and fairs.*

It must not be overlooked, that this charter, like that to London, is granted to the *men of Chester*, and their *heirs*, who are shortly after called the citizens.†

Thus in the 22d year of this reign, Ranulph, Earl and Constable of Chester, granted to *all the citizens* of Chester, the liberties and customs which *they* had in the time of any of his predecessors. And if any citizen should die, his will should be held good, whensoever he should die. If any citizens should buy any thing in full day, and before witnesses, and a demand should afterwards arise respecting the purchase, either of a Frenchman or Englishman, who could disprove it; he who made the purchase should be quit of the king or any of his bailiffs, restoring what he had bought; but otherwise, he cannot make satisfaction to the seller. 1121.

The charter then concludes with some provisions, which are immaterial in a general point of view.

There are also many other charters granted by this king to several places.

One to *Barnstaple*, recognizing it as a *borough*, and granting a fair there.‡ Barnstaple.

Another by the same king, to the canons of *Huntingdon*, that the soke of St. Mary, and their two hides of Norman Cross hundred, be so quit of the *commonalty* and *gelds* of the borough of Huntingdon, sicut comitatus intravit inde in diratiocinamentum adversum burgenses et in burgensibus 1100.
Huntingdon.

* 1 Petit's MS. 116. In. Temp. Lib.

† 1 Petit's MS. 114. In. Temp. Lib.

‡ Risd. Survey of Devon, vol. ii. p. 411—413. Car. Ant. H. H. No. 2. in Sched.

Henry I. defect.* And if there is any one of the *men* of that *soke* who has a shop in the borough, *let him be in the commonalty of the borough*; if not, let him render there his custom of his shop, which he ought to render.

This charter appears to be a recognition by the king of the exemption of this ecclesiastical *soke* or liberty—in the manner to which we have before frequently adverted—from liability to the duties which belonged to the *commonalty* or *inhabitants* of the place; viz., the paying *scot* and *lot* within the borough—or the public dues to the crown, described under the term of “*geld*.” The sheriff had made a return against the burgesses, and traversed the liability of the *soke*, and had stated the burgesses to be in default. But it seems that if one of these men of religion had a shop in the borough, he must then (as William the Conqueror provided for the Normans who had been in England before his coming) be in the *commonalty of the borough*, and pay his custom, *scot and lot*, as the rest of the *inhabitants*.

Dunstable. A charter was also granted to the church of *Dunstable*, which gave to it the whole manor and *borough* of *Dunstable*, and the market of the town, &c.,—and the liberties and free customs to the town belonging,—and *soc* and *sac*, *toll*, *them*, and *infangthef*; that they and their men be quit of *shires and hundreds*, murder, *geld*, &c., and from all customs and similar exactions.†

This is another instance of the exemption of ecclesiastics and their property from temporal duties; they being subject to ecclesiastical jurisdiction and burdens, upon the same principle as the burgesses were exempted from all duties and liabilities in the county at large, because they executed them within the limits of their own jurisdiction.

Rochester. A charter of this reign, directed to the archbishops, &c., and to all his barons, French and English,‡ also grants and confirms to the church of *Rochester*, many places, with *soc* and *sac*, and *toll* and *them*, and all other *customs*, rights, and liberties, which they ever had.

* Car. Ant. H. No. 9.

† Car. Ant. S. S. No. 6.

‡ 1 Dug. Mon. 29. a.

This king likewise granted charters to many guilds; and Henry I. as we have had occasion before, and shall have occasion again, to speak of these bodies, it is desirable that the reader should have some instances of these grants before him.

The first charter of this description is one by Henry I.,* Cnihten addressed (amongst others) to the bishop and reeve; giving Gild. to the church and canons of the Holy Trinity of London, the soke of the English Cnihten gild, and the land belonging to them within the *borough* and without, as the men of that guild had had granted to them; and the king directs that they should hold them freely with sac and soc,—toll, and them,—infangthef, and all their customs, as the *men of the guild* held them in the time of King Edward; and as King William his father, and King William his brother, had granted to them.

The king further gave to the prior and canons of the Holy Trinity of London by another charter,† liberty to hold their men and their land of English Cnihten gild, as freely as their ancestors ever held them in the time of his father and brother; and that they might be free of ward and forfeiture as his proper alms, because they ought to be free as their ancestors had been. And a third grant was made to the same effect.‡

From these charters we learn that the Cnihten gild had existed from the time of King Edward:—but it appears clearly to have been a separate and independent guild of itself, unconnected with the borough or city; and being a voluntary society, the members of it would not be exempt from the ordinary temporal duties, though they might have a soke or liberty for civil jurisdiction over their tenants, which is continued to the church of the Holy Trinity, with sac and soc, toll and them. However, as it was a lay fee, though granted to the church, their tenantry would be subject to all temporal duties within the borough: and therefore we do not find in these charters any exemptions from suits of shires and hundreds; and such exemption did not in truth exist:—

* Car. Apt. N. No. 3.

† Ibid. No. 4.

‡ Car. Ant. N. No. 5.

Henry I. because this district afterwards became the ward of Port-
 Portsoken soken, or the ward of the Soke; now known as Farringdon
 Within and Without—that is, the ward, like the soke, was
 not only within the walls of the city, which terminated at
 Ludgate, but extended also over the part of the soke with-
 out the walls, now called the Liberty; and which spread
 itself as far as Temple Bar. The whole of this district is
 still subject to the jurisdiction of the wardmotes (which are
 the same as the court leet); and the inhabitant house-
 holders are required to attend them; and are subject to all
 the liabilities resulting from that suit, as executing the
 office of constables and other offices, and serving upon in-
 quests, &c.

1122
 Norwich. This king also granted a charter to the citizens of *Norwich*,
 giving them the same franchises and liberties as the city
 of London then had.

1103.
 Petersfield. In this year we have also a grant from Hawise, Countess
 of Gloucester, to her *burgesses of Petersfield*, who had
 erected houses and *resided* in the borough of Petersfield, and
 who should erect therein, all the liberties and free customs in
 the same borough which the men of Winchester have in their
 city who are in the guild merchant; and they should have the
 same in the guild merchant of Petersfield, as her father,
 William Earl of Gloucester, had granted to them by his
 charter.

1198.
 9 Rich. I. In the 9th year of Richard I., John Earl of Moreton, con-
 tinued the privileges to the burgesses.

1296.
 24 Edw. I. And by an inquisition in this year it was found amongst
 other things, that there were there two views of frank-pledge
 to be holden yearly. Also the toll there is worth yearly
 100s. And the pleas and perquisites of courts yearly,
 26s. 8d.

1307.
 35 Edw. I. By another inquisition of this date it was found, that the
 Earl of Gloucester and Hereford, on the day on which he
 died, held a certain hamlet, which is called De Mapelderham,
 and a certain *borough*, called *Petersfield*, of the Lord the King
 in capite.

Also they say that the borough of Petersfield renders yearly,

17l. 0s. 18d., &c.; and that there is there certain *toll*; and Henry I.
that the perquisites of courts are worth yearly 5s.

In another inquisition of this date, it was found that 1387.
18 Rich. II.
Hugh, Earl of Stafford, in the said writ named, held in the same county, on the day on which he died, of the Lord the King, in capite, the borough of Petersfield, with the appurtenances and one market in the same borough, together with two fairs. And that the same earl held in the said county, on the said day on which he died, four hamlets, with the appurtenances to the borough aforesaid pertaining; viz. Mapelderham, Weston, Nuttide and Shete, of the Lord the King in capite, together with the pleas and perquisites of courts to the aforesaid borough and hamlets pertaining; all which borough, hamlet, market, fairs, courts, fees and advowson aforesaid, are holden of the Lord the King in capite, as parcel of the honour of Gloucester, by military service.

In this year Humphrey, Earl of Buckingham, Hereford, Stafford, Northampton, and of Perche, Lord of Brecon and Holderness, by a charter, reciting that a certain pension of *five marks*, from the burgesses of his lordship of Petersfield, in the county of Southampton, by one Maud Heuet, of the lady there, in the time of the said countess only, and not before or afterwards (as by the evidences of the said *burgesses* thereupon shown to us and to our counsel, evidently appears) had been unjustly levied, and was taken at *two law days*, in the name of *cert money*, granted to the aforesaid burgesses of Petersfield, that they and their *heirs* from such yearly pension or *cert*, should be wholly quit. Saving always, and reserving to him and his heirs, all other the rents and services whatsoever by them the said burgesses, and their heirs and ancestors, to his said lordship anciently due. 1480.
18 Hen. VI.

In the course of our inquiries we shall find many instances of references made from the enjoyment by one borough of the same privileges belonging to another; and, generally speaking,—the charters,—parliament rolls,—and parliament writs,—all proceed upon the assumption that the boroughs were essentially the same. At this period we have such an

Henry I. instance :—in a grant to the prior of Dunstable, in Bedfordshire, it is directed, that whosoever came to *inhabit* there, should have land at 12*d.* per acre; and enjoy the same privileges and freedoms as the city of London, or any other *ancient city*.

SCOTLAND.

The municipal rights of Scotland appear with sufficient distinctness in this æra to be worthy of our attention.

Although Abercromby* and Dr. Robertson say,† that the boroughs of Scotland first sent burgesses to Parliament in 1326, the 20th of Edward II., by order of Robert Bruce; yet it is clear that *boroughs* existed in Scotland, as in England, long before that period. For in the 8th chapter, the laws of Malcolm II., who began to reign in 1004, relative to out-laws in the courts of the justiciar in the eyre, the sheriffs, *burghs*, &c., states the amercement within a *burgh* before the *provost* and *baillies* to be 8*s.*; and 4*d.* to the serjeants of the *burgh*.

Ethelred,
England.
—
Malcolm,
Scotland.
1004.

It may be worth observation, with reference to the etymology of the word Borough, (by Sir Edward Coke, referred to the Saxon word *borroe*, a pledge,) that, in the 8th chapter of these laws, relative to the duty of the coroner, bail are constantly mentioned under the term *borgh*:—it being there directed, that the offender may be let to *borgh* by the king's letter until the justiciar come.

1124.
David I.
Scotland.

Glanville.
Regiam
Majesta-
tem.

It was at this period, about thirty or forty years before the compilation of the book of our laws under the name of *Glanville*, that the *Regiam Majestatem* of the Laws of Scotland is supposed to have been compiled.

It is true, Craig does not conceive that treatise to be of great authority; but the other writers on the Scotch law, particularly Lord Bankton, differ from him on that point. At all events, it is probably a work of sufficient antiquity to justify its being here used to illustrate the subject of our present inquiry; as far, at least, as any information can be obtained from it; although reasonable doubts may

* Vol. i. p. 635.

† Vol. i. p. 90.

be entertained, whether it is of the antiquity which it as- Henry I.
 sumes, particularly as the civil law is referred to in it, and Regiam
 the Pandects were not discovered at Amalfi till 1130. In Majesta-
 tem.
 other parts of the work, as well as in the Leges Burgorum,
 there are evidently passages which have been introduced at
 a subsequent period.

In the 3d chapter it is said, that plea of barons pertains to Cap. 3.
 the sheriff of the county, for pleas decided in baron court,
 may be redeemed in the sheriff court.

The 4th chapter states, that some civil pleas, which are Cap. 4.
 not criminal, pertain to *provosts* and baillies of *boroughs* and
cities.

And some criminal actions pertain to some of those judges
 and their courts; chiefly to them who have power to hold
 courts with soc, sac, gallows, and pit, toll and them, in-
 fangthef and outfangthef—terms applied to local jurisdic-
 tions:—and which we have seen so constantly occurring in
 the early English charters.

In the 5th chapter, among the actions before sheriffs, jus- Cap. 5.
 ticiars, and baillies of boroughs, which are there particularly
 enumerated, the plea concerning *slaves* or *bondmen* is directed
 to be before the sheriff; and the writ of distress for debts,
 before the justiciar, sheriffs, and *baillies of boroughs*; as it
 shall please the king by his letter to command them, parti-
 cularly within their jurisdiction.

The 7th section of the 6th chapter speaks of the *mayor*, Cap. 6.
 or his *toscheoderach*,* (serjeant, officer, or mair of fee.)

Amongst the *essoins* specified in the 8th chapter, one is Cap. 8.
 being absent at a public fair.

The 13th chapter speaks of the jury. Cap. 13.

The 17th chapter directs, that masters shall make their Cap. 17.
 men appear.

The 18th chapter ordains, that no man shall buy any Cap. 18.
 thing, unless the seller find to the buyer one lawful *borgh*;
 respecting whose responsibility, minute directions are given.†

* A barbarous name amongst the ancient Scotch and Irish, for serjeant or officer
 of the court, who carried their letters of citation into execution.

† Vide Sax. Ll.

Henry I. The 20th chapter speaks of the courts of those who have their *particular courts under the king*.

Regiam
Majesta-
tem.

Cap. 20.
Caps. 24, 25.

Chapters 24 and 25 relate to the summoning the superior or over-lords.

Cap. 11.
Bondmen.

The 11th chapter of the 2nd book relates to *native bondmen proclaimed to liberty*: and the 4th section directs, that if the person alleged to be a bondman, affirms himself to be a *freeman*, and finds one *borgh* to the sheriff for his appearance, the plea shall be decided in that sheriffdom.*

Freemen.

Other directions follow, for the appearance of the parties and the hearing of the case: and the 10th section provides, that if the person who affirms himself to be a *freeman*, produced *divers and sundry of his kinsmen, descended of the same stock* with himself, whose *liberty* is known, or proved in court, then he shall be made *free*: and subsequent sections give directions for ascertaining whether the kinsmen who are produced, be free or not,—and the judgment which is to pass in consequence. From whence it is hardly possible to avoid drawing the conclusion—that the modern right of the sons of freemen to be made free, is founded upon a supposed inquiry of this kind; and that it originated, both in England and Scotland, in the common law, and not in any corporate privilege.

Cap. 12.

The 12th chapter states the different modes by which a man may come from servitude to liberty—which much resemble those of our own law. The 11th, 12th, and 13th sections state, that every *freeman* may quit claim to his *bondman*, as far as respects himself and his heirs; but not so as to remove the objection of any stranger to him as a *juryman*, or otherwise, unless the bondman was *made free* with the license, or by command of the king:—which may perhaps be one reason why the general charters are granted or confirmed by the king, that the *inhabitants* of particular boroughs should be *free*—as by that means they would become so absolutely, and not in the qualified manner mentioned above. The 14th and 15th sections state, that *if a bondman has dwelt and remained peaceably upon any man's*

* See also Year Book, 38 Edward III. p. 34.

land for *seven years*,* not challenged *as to his estate*, he shall be free; and the master under whom he was *born*, shall not be heard to challenge him, as his bondman, *after seven years*;† and the liberty he is to have, is described to consist in passing, repassing, coming, and remaining, where he pleases, freely, without stop or impediment of any man:—which are almost the same words, in which the *freedom of free burgesses* is described, in the numerous charters granted in the reigns of John, Henry III., and the three Edwards.

Henry I.

Regiam
Majesta-
tem.Freedom
after seven
years' resi-
dence.

But the 16th section provides, that no prescription shall hold against the king's native bondmen—for wherever they dwell, in any man's land, they shall be restored to the king.

The 17th section provides, that if any native bondman, whosoever he be, remain quietly for the space of one year and a day—and it is added, in a parenthesis, in different print, (such as the king's burgh, in their community or guild,)—and is not challenged by his master, shall be *free*. And in the writ of bondage, there is an exception of the king's domains and burghs.

Bondmen.

It appears equally conclusive, from these sections, as to the freedom obtained by a seven years' residence, that the right to freedom *by apprenticeship* had its origin in these, or similar laws:—an inference much supported by the provision, that the right should accrue *after the seven years*; as at present practised.

Appren-
tices.

The saving, in the 15th section, of the right of the king, seems also consistent with the law as to tenants in ancient demesne, who are exempt from suit at the tourn and leet, and payment of the knights' wages—which could only have been on the ground of their continuing the men or villains of the king, notwithstanding their residence in any other place.

Tenants in
ancient
demesne.

The reason of the freedom acquired by residence in any *privileged town*, has been already given, by reference to the

Privileged
Towns.

* See also 15th chap. Deuteronomy, and the 21st chap. v. 2.

† If the lord has not had seizin of his villain in gross within six years, he is bound by the stat. 32 Henry VIII. c. 2. See Noy, 27, Pigg v. Caley. See before, Newcastle, and post. Glanville, lib. v. cap. 5.

Henry I. necessity of having the king's license to make a person absolutely free—which general license is contained in the charter granted to the town. In the margin of the 17th section; the 15th verse of the 23rd chapter of Deuteronomy is referred to, as the origin of that law. The passage quoted is quite general; and the limit in it to communities or guilds, is introduced parenthetically, and in such a manner as to raise an inference, that it was a subsequent interpolation.

Regiam Majestatem.

Glanville. In Glanville,* the same doctrine is stated more distinctly,†—and being of the community, is there made the expressed condition of the freedom; but the language of that work seems to have been borrowed from the civil law. And as the year and the day is clearly taken from our common law, and directly connects itself with the obligation of every person to be sworn in the Leet, after a year and a day's residence within its jurisdiction, applying to every body, as well villains and others, as members of the guild,—it would appear reasonable to refer the whole to our common law, and to reject the limitation to the members of the guild, as an unauthorized interpolation from the civil law; particularly as in the 9th section of the succeeding chapter, the freedom by dwelling within the burgh, is referred to without any such qualification. Or being in the guild, might mean nothing more than contributing to the common *geld* or payments, called by William the Conqueror the “scot and lot:” —which would reconcile the whole with the law—the charters—and the general history, both parliamentary and municipal.

Year and a day. It may be observed, that in the 10th section of this chapter, the year and the day for reclaiming bondsmen from holy orders, is directed to be computed from the time the master knew of the ordination; on the ground, no doubt, that the master might not have the means of knowing when it took place,—or at least, the law would not infer that he had such knowledge. The same observation may be made, as to the

* Lib. v. cap. 5.

† See also charter William I. Lord Lit. His. Hen. II. App. vol. i., 526, sec. 66. Lambard's Archyonomia, p. 172, chap. 66. Lud. ii. 243.

admission into the guild ; and yet no such period for calculating the year and a day, is in that case mentioned. But if the limitation as to the guild is omitted, and it should be left to the common law, then the question is, whether the person who has resided a year and a day, free from the control of a lord, in a borough, is not bound to do his suit real at the Court Leet, by swearing allegiance to the king and the law ; of the doing which, as a duty primarily to the king, and secondarily to the public, the lord is bound to take notice.

Henry I.

Regiam
Majesta-
tem.

The supposition, that the limitation to the members of the guild, is an unauthorized interpolation, is much confirmed by the circumstance,—that in a subsequent part of this same book, the laws of the guild are given as distinct from those of the boroughs ; and in chapter 17, this provision as to the freedom of the bondmen of earls or barons, or any other man coming to a burgh, and buying a burgage, and *dwelling* in it a year and a day without challenge, is stated absolutely ; and he is described as entitled to enjoy the full liberties of the burgh as a burges, without any limitation as to the guild, and no other exemption but as to the bondmen of the king, who are of course excluded, because no time can run against the crown.

As this general provision, without any qualification, is to be found amongst the laws of the boroughs—it seems that it should have more weight and authority, than the other which is not introduced so distinctly with reference to them, but to the guilds :—as to which it is a proper insertion ; because the residence away from the lord, is not less effectual to procure liberty, because he was in a guild. And when speaking of a person so circumstanced, it would be natural to adopt that mode of expression, which is perfectly correct, as to the guilds, and is only rendered incorrect by assuming, that the mode of obtaining freedom, is confined to the being in a guild.

In the 14th chapter, the state of a *bondman* is described to be, as subject to the hand and power of his master :—which accounts for his not being liable to do suit at the

Bondman.

Henry I. Court Leet; because he owed allegiance to his master, who, in return, as we have shown before, is responsible for him, and it was not therefore necessary to give his pledges at the Leet.

Regiam
Majesta-
tem.

Cap. 41. The 50th section of the 41st chapter provides (as is indeed repeated in our own law, by Sir Edward Coke*), that the heir of a burgess is of perfect age when he is 14, that is, when he is bound to take the oath at the Leet, or when he can number and tell silver, or measure cloth, or do other his father's business:—which affords a strong inference (as well as the 12th chapter of the same book, in which the modes of becoming free are enumerated), that the being free was not confined to freeholders alone, but extended to all others who were of a *free condition*, as has been already observed, in the comments upon the Saxon laws.

Another distinction, as to the duties arising from tenure and free residence, so apparent in our own law (as has been already mentioned, and will be hereafter further illustrated†), is to be met with in this collection of laws; as it appears clearly, that a vassal may make sundry homages to different lords, at the same time; but from the very nature of things, can owe suit in respect of his residence, only at one place at the same time.

Cap. 22. By the 22nd chapter of the 3rd book, it appears, that pleas and actions against lords alleged to have failed in doing justice, pertains to the sheriffs; and also as to undue services demanded by the lords; which would seem to show, that manors having Courts Baron, could still be subject to the jurisdiction of the sheriff; but the Court Leet altogether excludes his jurisdiction in the tourn.

Cap. 9. Residence. The 9th chapter of the 4th book, relative to Haymsuckin, or the freedom of every man's house, describes it as, "*the proper house, where he dwells, lies, and rises, daily and nightly;*" affording a strong instance of what the Scotch law considered residence. And in the 3rd chapter of the attachments, or baron laws, the summons is to be made at "*the dwelling house of the defender, where he makes residence.*"

* Inst. ii. 71.

† See before, Ll. Henry I., and Stat. of Marl.

It may, however, be observed, that the summons relating to lands, is to be on the land, and not at the place where the tenant dwells.

Henry I.

Regiam
Majesta-
tem.

Cap. 41.

Vagrants.

In the 41st chapter of that book, and also in the form of the court baron, it is directed that every baron may purge and cleanse his lands twice in the year of all malefactors, and men of evil bruit and fame, by an assize of honest and faithful men—an early instance for the passing and removing of *vagrants*, probably not much considered in our present system of poor laws; although there can be no doubt but these, and similar provisions, were the foundation of that system; unless, indeed, they are with more propriety traced to our earlier and common ancestors the Saxons.

Chapter 57 contains the writ of right within a burgh, which is directed to the provost and baillies of the burgh.

Cap. 57.

The 63d chapter, and also the 90th of the *Leges Burgorum*, provide, that no man shall lodge *strangers*, or retain them in his house after one night, unless he has a *borgh* for them, or will be pledge for them himself. And if any man remains in a town after the space of one night, the *justiciar* or sheriff shall accuse him, and do with him as they please.

Cap. 63.

Strangers.

It will be seen hereafter, that these provisions, borrowed from the Saxon institutions, were the foundation of the law, as stated in Bracton, although the principle is there more fully explained, and the precise application of the rule more minutely detailed.

It will be observed, that the introduction in this place of the *borgh*, is again corroborative of Lord Coke's derivation of the term borough from this word;—and although it may be urged that the pledge here required is from the *strangers* generally throughout the shire, yet it is by no means unusual to find a peculiar application of a general term to some particular part of the whole,—as the leet, though a term applicable also to the sheriff's tourn, has been peculiarly appropriated to a court of a similar description held within a smaller limited jurisdiction,—and thus the borough, being a place separated from the county in which

Pledges.

Ancient
Custom

Pledge

Henry I. the freemen were to give their borroes or pledges, had that name appropriated to it as a characteristic distinction.

The analogy between this law, and the modern vagrant laws, as well as its connection with questions of fixed inhabitancy and parochial settlement, will readily be recognized.

Cap. 67. Chapter 67 provides, that no man shall be tried by one of
Trial by Peers. an inferior degree than his own peer—as an earl by an earl, &c.—a burgess by burgesses.

Cap. 71. Chapter 71 directs, that the *sheriff* shall not do justice
Sheriff. without his own jurisdiction.

Cap. 72. In the 72d chapter, which speaks of the breach of the
Indwellers. king's peace, the inhabitants of Galloway are described by the term *indwellers*.

Cap. 79. By the 79th chapter, two justices in eyre are directed to be holden yearly at Edinburgh or Peebles, at which all freeholders holding of the king, and being within the realm, shall appear to give their advice and judgment.

Cap. 100. Chapter 100 directs, that barons having liberties with soc, sac, them, toll, infangthef and outfangthef, may do justice in their court upon any man taken within their freedom, seized with manifest theft in their hand having, or upon backbearing, and is pursued by sicken and sure *burghs*.

Cap. 101. Chapter 101 provides, that all officials, justiciars, chamberlains, sheriffs, provosts and baillies, after they are out of their offices, are to remain in the same places in which they exercised their office, for 40 *days*, and that publicly, and that all men might have free liberty to complain against them.

The reader will not fail to remark, that the period of 40 days, so common in our law, is here also adopted.

1126. As far as we have been at present able to discover, the
Rutherglen. earliest charter granted to any borough of Scotland is in the 26th of Henry I., where it is said that King David made Rutherglen a *free borough*.*

Ayr. The same king also granted another charter, making a borough at the castle of *Ayr*, and giving to the *burgesses there dwelling*, all the privileges of other burgesses *dwelling* in other boroughs.

* Wight on Scotch Elections, 36; and see unprinted Statutes.

We find also an early charter to Inverkeithing, granted ^{Henry I.} by King William the Lion to the magistrates and *burgesses* of that *borough*, which, however, supposes the previous existence of a borough, with extensive privileges. ^{Inver-keithing.}

These, as far as we can now ascertain, appear to be the most ancient charters relative to the Scotch boroughs.*

It is impossible not to draw from them the inference, that the burgesses in all the boroughs were of the same class, and that they were all *dwelling* within the boroughs, which we shall find hereafter confirmed by the Laws of King David occurring in the next reign.

STEPHEN.

King Stephen, succeeding his uncle Henry I., contrary to the fealty he had sworn to Matilda, found it necessary to ingratiate himself, by every possible means, with the nation, and particularly with the *citizens of London*, to whom he is said to have given a confirmation of the charter of King Henry—and to the nation at large he confirmed all the liberties and good laws which his uncle had granted to them, and all the laws and customs they had in the time of King Edward. It is therefore obvious that at this period the Saxon institutions had the full authority of laws, and were recognized as such by the king and the people. And the king directed that the barons and *men* of England (in the language of the charters of that æra) should have and hold all those laws and liberties to them and their heirs, freely, quietly and fully:†—which probably was considered a sufficient recognition of all former privileges, as well of particular places, as of his subjects generally, which may account for the few municipal charters occurring in this reign.

* See Appendix to Wight on Elections, p. 405.

† Wilk. 310.

Stephen. In a more advanced period of our history, we shall find many of the adulterine guilds, not founded with the authority of the crown, called in question. In this reign, adulterine castles also, which stood in the same predicament, were proscribed, in the peace made at Wallingford between Stephen and Henry II., then Duke of Normandy.

Chichester. Besides the confirmation to London, to which we have already adverted, this king also gave a charter to *Chichester*, granting that the burgesses should have all the customs of their borough and merchant guild, as they had them in the time of King William, his grandfather and his uncles:—the guild being here again spoken of *separately and distinctly from the borough*—rather as an appurtenant to it, than as one of its characteristic features.

Pipe Rolls. We have before mentioned a pipe roll, which by some is attributed to the reign of Henry I.; but which, in point of fact, is appended to those of the fifth year of this king, from which time there is a regular succession of them.* Excepting the chartæ antiquæ, these are the most authentic documents of this period.

1139. We should shortly state, that in the first entry of Oxfordshire, the account of Bestoldus is charged with a debt of 115*l.* 15*s.* 8*d.* which he had unjustly taken from the *villains* and *burgesses* of the proper manors of the king. And as confirmatory of the guilds being separate from the whole body of the inhabitants, the tellarii, or weavers of Oxford, render an account of one mark for their guild. And the *corvesarii* of the same place, render an account of queen's silver for a re-grant of their guild. There appears also to be a pardon, by writ of the king, to the *burgesses* of Oxford, of 10*l.*

As a confirmation of the observation we have before made with respect to Domesday, that it was an enumeration of the rents and dues of the crown, and not of the different classes of the community, we ought here to remark, that the *burgesses of Oxford* are not mentioned in Domesday in the return for Oxfordshire, though they are here repeatedly spoken of in this period, so short a time after the sur-

* These Rolls are now deposited in the British Museum.

vey; there being no appearance of any charter granted to ^{Stephen.} them between this reign, and the time of the compilation of the survey. Nevertheless it is clear that it was, in point of fact, a borough in the reign of William the Conqueror, because a burgess of Oxford occurs in Domesday in the return for Buckinghamshire.*

In the pipe roll for Derbyshire and Nottinghamshire, the sheriff renders an account of the aid of the boroughs. The same entry occurs for *Wiltshire* and *Dorsetshire*; in the former of which the toll of the market of *Salisbury* is mentioned as belonging to the town of Wilton, which the king granted to the Bishop of *Salisbury*. A sum is pardoned to the burgesses of *Dorchester* on the ground of their poverty. The *reeve* of *Malmsbury* also renders an account of the firm of that place, separately from that of the sheriff.

Thomas of Worcester has a debet that he might be *alderman* in the guild of the merchants of *Worcester*. The sheriff returns an account of the aid of the borough of *Cambridge*. The tellarii, or weavers of Huntingdon, render an account of 40*s.* for their guild. The sheriff of the county renders an account of the aid of the borough of *Southwark*; and the same occurs of many other boroughs in other counties—as the city of Gloucester—Thetford—Norwich—Ipswich—Bedford—Tamworth—Stamford. There is a free gift or release of the burgesses of *Hertford* on account of their poverty.

The sheriff of Kent renders an account of the firm of *Dover*, and Robert of Hastings of the lestage of *Hastings* and *Rye*. There is also a similar entry for *Exeter*. The aid of *Tamworth* is excused upon account of poverty.

Besides the above entries of the aids of the boroughs, accounted for by the sheriff, there are others accounted for separately:—as *Windsor*—*Northampton*—the city of *Colchester*—*Wallingford*—and *Carlisle*. The burgesses of *Durham* account for 100*s.* of a plea; and 50*s.* is given to them as a free gift on account of the burning of their houses.

It is worthy of remark, that, as in Domesday, no borough

* Fol. 143, B. col. 1.

Stephen. in Cornwall is mentioned ; so likewise no aid of any borough in that county occurs in the pipe rolls.

From these extracts it is evident, that the guilds were distinct from the boroughs :—that some of the boroughs accounted for their aids themselves,—whilst others were still so far under the jurisdiction of the sheriff, that he received and accounted for them.

We have seen before, in Domesday, that some persons who would otherwise have been burgesses, were excused, and excluded, from the duties and privileges of that class, on account of their poverty :—so also here, many of the boroughs are excused from their dues to the king on the same ground.

And if the same cause long continued ;—and they did not pay their dues to the crown, nor exercise their jurisdiction ; particularly that of the court leet,—at which the suit royal was due to the crown, and the criminal and municipal police of the executive government, ought to be administered,—the exclusive rights and privileges of the borough would cease ; and it would be again absorbed into the county :—all those important public acts being then performed in the larger district of the county, they would altogether cease in that of the borough. Two striking instances of which we shall hereafter have occasion to quote.

The Empress Maud, during the short time she held the regal power in this country, appears to have granted a charter Devizes. to the borough of *Devizes*,* where the Bishop of *Salisbury* had lately built a castle, which Stephen compelled him to relinquish.† The queen, probably to obtain the favour of the town, which had suffered under the king, granted to them this charter of privileges.

The same queen expressly recognized, by her grant, the *corporate power* of abbeys ; at least as far as related to their perpetual succession ; as she contradistinguished them from the laity, who could take only by inheritance. For it

* Amongst the early writers, this town received the several appellations of *Devise*, *Divise*, *De vies*, and *Divisio*,—because it is said to have been divided between the king and the Bishop of *Salisbury*. And even as late as Henry VIII., the town was called by Leland, “The Vies.”

† *Gul. Neubr.* p. 362. *Sax. Chron.* p. 238. *Will. Malm.* p. 181.

appears from a record in the 6th year of Edward II., with reference to the liability to the repairs of the bridge of Stratford-le-bow,* in Essex, that Matilda had caused a bridge to be built there; and granted certain lands and premises for its repair;—she, hoping that they might more surely be performed by religious than secular persons, if they were charged therewith; lest the *heirs* of the latter, by lapse of time, might happen to fail—granted those lands to the abbess of Bocking, that she and her successors might repair and sustain the bridges. Stephen.

Norwich at this period was a place of considerable importance, the city containing 1238 burgesses, who held of the king by burgage tenure. Norwich.

However, in consequence of Hugh Bigod having held the castle against William de Blois, the king's natural son, the liberties of the city were seized by the king. But in 1138 they were re-granted. Afterwards, Hugh Bigod having incited the citizens to revolt, their liberties were again taken by the king; but subsequently restored to them in 1152. 1141.
1152.

SCOTLAND.

The laws and constitutions of burghs made by King David I. of Scotland (who lived in the time of King Stephen) next require our attention. 1136.
Temp.
Stephen.

The first chapter provides, that each burghess shall pay yearly to the king, for every *burgage*, which he *defends* and holds of him, and for every rood of land, five pennies. Burgage.

From which it appears, that the boroughs in Scotland, as well as those in England, were held by burgage tenure; and the term, "*he defends*," so frequently occurring in Domesday, is also used in this record.

The second chapter speaks of the making of burghesses, and the oath they were to take, to be faithful and true to the king, his baillies, and the *community* of the burgh. Making
Burgesses.
Oath.

* This place derives its name "Stratford," from an ancient ford over the River Lea, on the line of the Roman stratum or road from London to Durolytum (Layton in Essex). Matilda, Queen of Henry I., passing this dangerous ford, narrowly escaped being drowned, and ordered a bridge to be erected, from the arched form of which, the village received the adjunct to its name.

Stephen. The third and fourteenth, and many of the subsequent chapters, mark the distinction between *burgesses* and *upland men*: and in the laws of the guild, they are also distinguished from landwardmen, or persons living out of the borough.

Leges
Burgorum.

Cap. 3. 14.

Cap. 5. In the fifth chapter, the distinction between *burgesses* and *men dwelling without the borough*, again occurs.

Cap. 6. The sixth chapter confines the jurisdiction of all things occurring within the borough to its limits: and the seventh, prohibits burgesses from answering without it.

The distinction between burgesses and merchants (in the margin called, stranger merchants) giving so decisive an answer to the hypothesis in Brady, that the merchants were the burgesses, is distinctly marked in the eighth chapter.

Cap. 9. The ninth chapter secures the peaceable possession of lands after a year and a day.

Cap. 13. The burgess is described in the 13th chapter, much in the same manner as the citizen of London is in the *Liber Assisarum* of Edward III. It says, "*If a husbandman dwelling without burgh, has a burgage within burgh, he shall not be esteemed a burgess, but in that burgh in the which he has the burgage*; and if the husbandman, being a burgess, challenges a burgess *dwelling within burgh*, he shall defend himself by the law of the burgh."* The next sections also speak of the burgess *dwelling night and day continually within the burgh*, as contradistinguished from the husbandman before mentioned.†

There is undoubtedly some little intricacy in the construction of this passage; as there is in the book of assise respecting the citizens of London. But upon the whole, it is clear that the non-resident owner of the burgage is only a burgess *sub modo*, and not a perfect burgess, from whom he is expressly distinguished.

Cap. 15. The 15th chapter speaks of the burgesses of earls, abbots, priors, and barons, as distinguished from the king's burgesses. Establishing that burgesses were by no means confined to the king's boroughs.

* See before, in Domesday, observations upon burgesses entered as belonging to other manors.

† See before, p. 71, Dover—Domesday—" *Manet assiduus.*"

Chapter 16 provides, that a burgh's son, as long as he sits at his father's table, shall have the like liberty as his father, to buy and sell; but when he passes therefrom, he shall not trade, nor enjoy that liberty, except he be the son of a burgh.

Stephen.
Leges
Burgorum.
Cap. 16.

The latter branch of this chapter is almost unintelligible, unless it means, that a burgh's son, when separated from his father, shall not enjoy the liberty of the borough unless he be found by the jury, or acknowledged by the rest of the commonalty, to be the son of a burgh.

Chapter 18 speaks of *stranger* merchants, who are prohibited from buying merchandise within or without *burgh*, except from a burgh.

Cap. 18.

By chapter 20, it is directed, that no man but a king's burgh, shall have an oven for baking bread in his own land. And chapter 21 speaks of the jurisdiction of the provost as to bread, which is analogous to the assize of bread in our leets. Other chapters in the same manner, relate to the brewing of beer, to weights and measures, to which also chapter 133 refers.

Cap. 20.
21 and 133

In chapter 65, the provosts, baillies, and serjeants, are prohibited from baking bread, or brewing ale to be sold. And in other parts of the borough laws, there are prohibitions, as in ours of the leet, against swine being at large. And so also as to hedges.

Cap. 65.

Chapter 29 contains the following sections:—

Cap. 29.

Section 1.—When a man is made a new burgh, having no habitable land, he may have respite or continuation for payment of his borough mailes for a year,* which is called *hirset*.

Section 2.—And after a year and a day, he shall big † and inhabit his land.

Section 3.—If thereafter it is wasted by fire or warfare, and he has other habitable land, he may dimitt the wasted land, and not inhabit until he have power to rebuild.

These sections strongly imply, that the burghesses were inhabitants.

* House maile and mail men are afterwards mentioned, in chap. 57; and in chap. 68, maile is spoken of with respect to the king's mills, as synonymous with Firm.

† "Bigged land," or land built upon.

Stephen. By chapter 35 it is provided, that a burghess shall not be compelled to take any man as pledge, but a burghess.

**Leges
Burgorum.
Cap. 40.
58 & 140.**

Chapter 40 directs, that every *stranger*, who afterwards in chapter 58, is called a *Stallanger* man; in chapter 120, dusty feet:—and in chapter 140, farand-man, should agree with the provost the best way he might; or he should give a halfpenny every market day. And the 2d and 3d sections specify what should be paid on market days by *stranger* merchants, for covered stands or booths.

Chapter 43 states, that there were three head courts yearly within burghs, at which all burghesses should appear:—the first after Michaelmas, the second after Christmas, the third after Easter.*

The second section provides, that whatever burghess was not present at these courts, being within the burgh, should pay an *unlaw* of 4*d.*, except he lawfully excuse himself, or is sick or forth of the country, or at a fair. This “*unlaw*” was no doubt due on the ground, that in consequence of his absence, he had not been sworn to the law; and therefore was not, according to the words of the London charter of William I., *law-worthy*; and by the general law, would require fresh admission, for which he should pay another fine.

The 3d section provides, if he be a burghess *dwelling* without the borough, and was absent from the court, he should pay 8*s.*, and that for this cause; because á burghess dwelling in the country or *landwort*, was not compelled to any court but to their three yearly head courts.

This last section would appear to support the doctrine of non-residence, at least as it is stated in the above translation. But the fact is, that the Latin is to a different import, and merely speaks of a person being without the borough, which seems to relate only to a temporary absence; a construction more consistent with the expressions in the 2d section, of being “forth of the country, or at a fair,” as well as with the attendance at the three yearly courts

* These courts appear to be analogous to our Court Leet; and the courts for pleas of lands and moveable goods, which, by chapter 51, are directed to be held within the borough every 15 days, to that of the Court Baron, and Hundred Court.

provided for by the latter part of the 3d section, and to which they would not be liable unless they were resiants. Stephen.
Leges
Burgorum.

The 44th chapter mentions burgages, which, in a parenthesis, are described to be lands within the burgh. Cap. 44.

By chapter 45, if an heir is absent, he is to be summoned to appear within 40 *days*. Cap. 45.

The 47th, 50th, and 52d chapters, speak of the *houses* of the burgesses, supporting the inference of their residence. Cap. 47,
50 and 52.

The 49th chapter provides, that if any man within the king's castle commits a trespass against a burgess, the burgess should crave and seek justice at the castle, and without the courts thereof. 9Hen. III.
c. 19.
Cap. 49.

Section 2. If a burgess commits a trespass against a castellan, the castellan shall crave justice of him within the burgh,—which with the 50th and 60th chapters, relative to the purchase of provisions by castellains from burgesses,—seem abundantly to show, contrary to the doctrines of Brady, that the *castles were distinct from the borough*.

Chapter 53 directs, that every man to be a king's burgess must have a rood of land. Cap. 53.

Chapter 55 provides, that if a burgess is taken *without his borough* for any debt or trespass, his neighbours, at their own expense, shall *repledge* him, if he be taken within his sheriffdom; but if without, at the expense of him who is taken—another instance to shew how such local habitation was at that time regarded, and vagrancy discouraged. Cap. 55.

Chapter 59 directs, that *Stallangers* may not have, lot, cut nor cavel concerning merchandise with any burgess, but only within time of fair:—which is spoken of as the freedom of the fair, and probably resembles our court of Pie Powder, particularly as in chapter 120, the merchants are called dusty foots. Chapters 91 and 92 give further security for the peace of the fair, and for the prevention of theft within it. Cap. 59.
Fairs.

Chapter 61 directs, that any burgess summoned to the king's court, shall appear there, and shall excuse himself saying, that he will do right at the court of his own borough—a privilege which it surely could not be in the power of any subject to communicate to another by mere election Cap. 61.

Stephen. into a corporation or otherwise, but such privileges must
 Leges have been annexed by right to some class or condition in
 Burgoram. society, and connected with local residence.

Cap. 62. The term "*burgh*," as a pledge, is coupled so directly
 Burgh. with burgesses in chapter 62, that the passage should be mentioned. If a burghess is summoned to do right for any trespass, and can find no *burgh* for him, the burgesses of that burgh shall keep him in *his own proper house*, in bonds, 15 days, &c.:—a further instance in which the burghess and his house are mentioned together, and which occurs again in chapter 63, as to the house of a burghess, who is absent in pilgrimage.

Cap. 68. Chapters 68 and 70 submit the management of the butchers, and king's mills, to the consideration of the *good men of the burgh*.

Cap. 123. Chapter 123 speaks also of the *faithful men of the town* interposing as to the possession of land.

Cap. 76. By chapter 76, brokers are to be chosen by *all* the bur-
 Brokers. gesses.

Cap. 77. By chapter 77, at the head court after Michaelmas, the
 Baillies. baillies shall be chosen of faithful men and of good fame, by the common consent of the *honest men* of the burgh, and they shall swear fidelity to the king, and the *indwellers* of the burgh.

This resembles the mode of electing bailiffs practised in many boroughs to this day. The "*honest men of the burgh*," were the *burgesses* by whom the election is directed to be made; and the "*indwellers*," to whom alone the bailiffs are to swear fidelity, were the same class. The manner in which they are here introduced strongly indicates that the privileges of the borough were confined only to them; and therefore to them alone the bailiffs bound themselves.

Directions against forestalling, and for the regulation of the markets, follow.

Cap. 80. Chapter 80 speaks of the "*watchers*" of the town, who in
 86. Watch. chapter 86, are more particularly described as *one man from each inhabited house*, to pass from door to door with a staff, and after *curfew*, with two weapons.

And in chapter 107, widows are described to be liable to the burden of furnishing a man to watch; and also to all the other public burdens, if they partake with their neighbours in buying and selling. Stephen.
Leges
Burgorum.
Cap. 107.

By the 99th chapter, it is provided, that no dyer, shoemaker nor flesher, shall be a *brother* of the merchant guild; a provision for which it may be difficult to account:—but it distinctly shows, that the brethren of the guild were separate from the burgesses. Cap. 99.

Chapter 102 speaks of the council of the *committee* of the burgh; and chapter 122, of the *community*. Cap. 102.

Chapter 108 provides, that a burghess *dwelling without the burgh*, may not buy, nor sell, nor be free in any other burgh, but in that in which he is burghess. Cap. 108.

This passage must be taken with some limitation; otherwise it would seem to authorize non-residence, which was inconsistent with the general law as it then stood. If a man went to live in another place out of a borough, he would have been obliged to give an account of himself, and say where he had before given his pledges:—till after 40 days, however, he would not be entitled to be enrolled in the place of his new residence; and if he did not enrol himself there within a year and a day, he would be amerceable.

By this chapter it appears, that a man, when he left a burgh, was immediately by that act, disabled from exercising or claiming the privileges of a burghess of that borough, in any other place:—and any limited privileges he was allowed to enjoy where he was an enrolled burghess, must, to reconcile the law to the other parts of the same system, be confined to the year and the day, during which the burghess had the opportunity of returning to his former residence, not having necessarily been enrolled in another place.

Chapter 109 states—If the Kemesters of wool pass forth of the borough, or landthwart, there to work and use their offices, having sufficient occupation within the burgh, they should be taken and imprisoned. Cap. 109.

The local and limited nature of the borough jurisdiction, is shewn by the 112th chapter, which directs, that a summons Cap. 112.
Summons.

Stephen. within a burgh, against a burges-man by the king's serjeant, shall be void; because they ought to be made by the serjeant of the burgh, who is to summon the man at his *dwelling house*. Which latter provision also establishes, that the burgesses in Scotland were, like those in England, householders.

Cap. 118. By the 118th chapter, it is not lawful to travel in time of night, without other witness; except for a person of good fame, or for good cause.

17 Edw. I. Chapter 120 mentions *burgesses, merchants, and dusty*
c. 2.
Cap. 120. *foots*; the merchants and tradesmen being again distinguished from the burgesses.

Cap. 127. Chapter 127 gives directions for buying and selling lands within the borough; and for determining, by 12 lawful and honest men, being burgesses, and a bailiff.

Cap. 128. Chapter 128.—No man shall buy or sell any thing within the borough, without the seller finding sufficient borgh, or lawful pledge.*

Cap. 137. Chapter 137 directs, that no man shall trade or enjoy the freedom (libertate) of a burges; but if within a year and a day after his entry, he have land *inhabitable* and strangeable, (*terram hospitatum† et detringibilem*.)

This chapter seems distinctly to describe a burges as an inhabitant householder; and shews also the reason why he should be so. If the burges had nothing by which he could be distrained within the borough, it would be difficult for the provost, bailiffs, or community, having only jurisdiction within it, to enforce a due performance of all the offices to which a burges was subject; or the payment of the several rates, and other burdens, to which he was liable. If he had land alone, there might be no distress upon it, by which these duties could be enforced; but if the land was inhabitable, or, as it is called, "*hospitatum*," that is, having a house inhabited upon it, then the borough was sure of having as well distrainable property there, as an

* Ll. Sax.

† *Terra hospitata* frequently occurs in Domesday. This Chapter is repeated in David II.'s Laws of the Four Courts.

inhabitant who could be compelled to contribute to the common burdens and duties of the borough.

Stephen.

Leges
Burgorum.

The interval of a year and a day, which is here allowed to a burgess, during which he is to procure the land or house, may explain the admission of strangers, which is often to be met with in the records of boroughs; it may also account for the eldest son only of a burgess, being particularly described as free, because as heir, he would be entitled to the mansion house, which would, under this law, give him the right of continuing a burgess.

The succeeding chapter, 138, coupled with the former, confirms the doctrine, that the *burgesses* should be *householders*; and that there could be but one burgess for each house. For it says—that two men, at one time, both together, cannot have the freedom of one burgage. This, of course, speaks of the *burgage* which could make a burgess—that is, according to the last chapter, “terra hospitata,” or land with a house upon it.

Cap. 138.

The first part of this chapter, speaking of fee farmers, clearly shows that burgess-ship was not confined to the owner of the burgage; but extended to the tenant. And as burgess-ship was connected with *resiancy*, and only one person could be burgess for the same house, it follows, that the tenant was the burgess, and that the lord was excluded from that privilege.

Chapter 139 states, that it is a statute of King David, that all his burgesses shall be free through all his realm, as well by land as by sea, to sell and buy for their own profit and commodity, without any trouble or perturbation, under one full amercement—because they are under his protection.

Cap. 139.

It is impossible not to observe the coincidence between the words of this chapter, and those which occur in the early charters of privileges, granted by our kings to the boroughs in England; as well as the similiarity between the protection and privileges here granted by King David, and that which was enjoyed by our boroughs, under the early royal charters.

Chapter 123 relates to those who are free from custom—speaking of that freedom *within burghs*, and also within

Cap. 123.

Stephen. *sheriffdoms*, where they *dwell*—which expressly confirms the doctrine we have before insisted upon—that the *burgesses* dwelling within boroughs, who owed suit at the court leet there, were of the same class of *freemen*, as those, who dwelling without boroughs, and in the shire at large, owed suit to the sheriff's tourn.

Leges Burgorum.

The Eyre. In the same book with the *Regiam Majestatem*, is given the precept for the *eyre*, which directs the provosts and bailies in Edinburgh, to summon their *comburgesses* dwelling within the borough or without. And all baillies, &c., and other officers who have intromitted or used any office within the borough since the last eyre; also to return the names of the *suitors of the court of the burgh*, and the *brethren of the guild*, and those who hold *booths* of merchandise; as well dwelling within, as without the burgh, with many other directions relating to the jurisdiction of the eyre.

And the second chapter directs, that all the *burgesses dwelling* landthwart, should be summoned to answer to such things as should be laid to their charge. These precepts appear again to raise an inference, that some of the *burgesses* lived without the borough; but to reconcile this with the general law, which requires the residence of the *burgesses*, their absence must be supposed to be of a temporary, or occasional nature.

The directions which follow as to the power of holding the court, appear to conform generally with the proceedings of the sheriff's tourn or court leet; and also to embrace the functions of the court baron. But the 9th requires the names of all the *burgesses*, dwelling within or without the borough; and a separate list of the *guild brethren*, distinct from those of other *burgesses*.

The articles of inquiry of the bailiffs seem to correspond with those of the leet. One of them is, that they raise a tenth and taxations unlawfully, without the counsel of the community of the borough.—The next is, that they sell and give the *liberties of the borough to strangers*;*—that they

* See before, p. 107; and *Rex v. Breton*, iv. Bur. 2267.

may buy, and sell with burgesses, and use the rest of the ^{Stephen.} commodities and liberties of the burgh. That they do not watch the borough properly, by which the neighbours are injured. And they cause the poor, and not the rich, to watch.

Another article in the 39th chapter to be inquired of, is, ^{Cap.39.} "If any man has abjured the town, to pass forth of the "burgh and is returned again;"—which appears in conformity with our former suggestion, to show, that the dwelling out of the borough was only a temporary absence.

In the same chapter they are also directed to inquire; "If "any man causes one dwelling landthwart to come to the "borough court, in hurt and prejudice of his neighbours."

As the former application of the term landthwart to burgesses who owed suit at the borough court, must be treated, in order to make it correspond with the general law, as referring only to a temporary residence out of the borough; so must this passage, which excludes landthwart men from serving in the court, be taken as applied to a permanent residence landthwart. The propriety of each of these constructions is supported by the consideration, that, without some such explanation, the two provisions would appear contradictory.

Another article speaks of the brethren of the guild. And another directs inquiry, whether the baillies *sell the liberty of the burgh* without consent of the community.

The grant of land to religious persons in mortmain, appears to be prohibited,—and is a confirmation that in those times the ecclesiastics were the only persons who were recognized in law, as having perpetual succession, and on that ground, designated as holding in mortmain.

The 35th article inquires, if any man not having the liberty, uses it against the liberty of the burgh, within or without the same, to the hurt of the king and his burgh. And the 40th chiefly inquires as to those who use the liberty of the burgh, not having bigged land within the burgh after a year and a day.

54. Whether widows are compelled to watch the burgh.

Stephen. 55. If any keeps or holds *a stranger* in his house, *and will not give pledge for him.**

57. If the serjeants are commonly chosen by all the burgesses, in conformity to the constitution of the burgh; indicating, that even at this early period, there was a disposition in the head burgesses, to withhold the right of election from the burgesses at large, and to restrain it to a small number.

60. If there be any common servant to the burgh, who is not burges of the same, or has *no habitation* within it.

63. If stallangers commonly buy and sell within the burgh, as burgesses.

In the short form of the inquiries in eyre in the 12th section, it is directed, that the baillies of the borough shall be asked who are their *neighbours*, that they will *repledge them and borrow*,—and they shall be *commanded to present in a schedule*,—and it shall be inquired of them if they will fine themselves and burgh, as pledges that the persons *shall be forthcoming to the law* and the justices' challenge; and if they say yea, they shall hold up their hands. But before this be done, the baillies shall *present* each person *bodily* before the justices, at the first day of the eyre.

This is directly in conformity with the law and practice of the courts leet in England; and is the real meaning and foundation of the resiants being presented, sworn, and enrolled at the court leet, as required by the ancient Saxon laws.

Conclusion From all these documents,—as well the general charter granted by King Stephen to the nation at large—as the particular charter he granted to Winchester—from the pipe rolls referring to the boroughs in England—the document of Queen Matilda, relating to the ecclesiastical corporations—and the laws of King David relative to the Scotch boroughs—taken collectively, the same irresistible inference we have before drawn from the previous records is confirmed; namely, that both the law and practice of our early institutions applied,

* Ll. Sax.

as reason would require, the rights and obligations of social government to individuals, in the places in which they inhabited. Stephen.
Conclusion

HENRY II.

King Henry II., adopting the example of his predecessors, with a view to conciliation, granted a charter for the common emendation of the whole kingdom;* and confirmed to the church, earls, barons, and *all his men, and their heirs*, all the customs and privileges which Henry I. had granted; and rejected all bad customs which he had revoked; and appears to have directed, somewhat arbitrarily, that all foreigners should depart from England. 1154
to
1189.

He also confirmed to the citizens of *London*, with other privileges, the liberty which had been granted by Henry I., that they should not plead without the walls. He expressly mentions that the liberties should extend over the ward of Portsoken, to which we have before adverted, as extending over the property of the Cnihten gild, as well within the walls as without—referring to the charter of Henry I., and also to the ancient customs of the city. London.

The king also granted to the *citizens of Canterbury*, a Canterbury charter, in words nearly the same as that to London, acquitting them of pleading without the walls, with the usual provisions as to murder—lodgings—and freedom from toll—as in the time of King Henry I. That there should be no miskenning in pleas,—and that *burgh-motes* should be held by them; as was provided in the London charter with respect to the hustings. The citizens have also their hustings granted to them as those of London; and in other respects it is in perfect accordance with the charter of that place. It seems from Somner, that this king also granted that the

* Wilk. 318.

Henry II. citizens should be governed by two bailiffs, at a fee-farm of 60*l.*:—and in the charter the city is called a *borough*.*

Shortly after this period, it appears that there was a *mayor of Canterbury*:—as that officer is mentioned in a record immediately succeeding the last, in Somner's Appendix.

All these officers—whether reeves, bailiffs or mayors—were only the officers of the crown, appointed for the government of the place:—but not in any respect denoting, or connected with, any peculiar corporate privileges. It is also an obvious inference from these charters, as well as those we shall hereafter cite, that the privileges granted were intended for the benefit of the *inhabitants* of the place, and of none other; as from the nature of them they could only be exercised by them, *and not by non-residents*: and that the burgesses of Canterbury, like those of the other boroughs, were only the *freemen residing within the borough*, as contradistinguished from the freemen living in the county at large without the borough. We find that they are called the "burgesses" at this time; and when the county paid danegeld, the *burgesses of Canterbury* paid an aid, and a donum, and the burgesses of Rochester an aid.† As a confirmation that all the boroughs were nearly under similar circumstances, we find that the tellarii and bolengarii both paid for their gelds in the same manner as we have before seen in the pipe rolls for the county of Huntingdon, and other places.

Hythe. The king also granted to the *men of Hithe*, acquittances of toll, and all custom of their buying and selling throughout England, with sac and soc, toll and them, &c.; and *freedom from suits of shires and hundreds*, as their ancestors had the same in the times of King Edward, William I. and II. and Edward I., and that they should not plead elsewhere, except where they were wont, and when they ought, to wit at Shepway.‡

This charter is granted to the "*men of Hithe*," but it

* Somn. Ant. of Cant. App. 5.

† Mag. Rot. 2. Rit. 12. B. Chent. 1 Mad. Exch. 693.
Turr. Lond. Inspe. 7 Edw. II. who confirmed it.

refers to the privileges they had in the time of Kings Henry II. Edward and William; and it must be remembered, that they are described as being "*burgesses*" at both those periods.

This king also granted, in the 10th year of his reign, the following charter to the *burgesses* of Bristol. Bristol.

"Henry, &c. Know ye, that I have granted to my *burgesses of Bristol*, that they shall be quit both of toll and passage, and all custom, through all my whole land of England, Normandy, and Wales, wherever they shall come, they and their goods: Wherefore I will and strictly command, that they shall have all their liberties and acquittances, and free customs, fully and honourably, as my free and faithful men; and that they shall be quit of toll and passage, and of every other custom; and I forbid any one to disturb them on this account contrary to this my charter, on forfeiture of 10*l.* Witnesses, &c."*

From this charter it is evident, that Bristol—the *burgesses* of which are mentioned in Domesday—continued a borough; as this grant is to the *burgesses*, as a body then existing. But their charter is clearly *not* one of *incorporation*:—nor does it speak of the *burgesses* as incorporated:—but rather describes them by their common law character of "free and lawful men," (*liberi et legales homines.*) As the king is speaking in his own person, and a lawful man is one who hath sworn his allegiance or faith to the king, the charter calls them "*mei liberi et fideles homines.*"

In the 30th year of this reign the "*men of Bristol*" paid a sum of money for the privilege of not pleading without their walls;† which terms must, as in the last instance of Hythe, be considered as synonymous with "*burgesses.*"

Henry II. also granted a charter to *his men dwelling* in the marsh near the bridge of Bristol:‡—which is only material for the purpose of showing, that the objects of this grant were the *inhabitants*, or the persons who *dwelt* in the marsh.

* So London Charter, Hen. I.

† 1 Mad. Exch. 398.

‡ See Barrett's History, p. 73, and 663, at length.

Henry II. Reginald de Fitz-Roy, who died in this year, granted to his free burgesses of *Truro*, the same privileges which they had in the time of Richard de Lacy, viz. *sac, soc, tol, them, infangthef*;—that they should *not plead nor be prosecuted in hundred or county courts, &c.*; nor plead elsewhere without the town;*—that they should be quit of toll throughout all Cornwall, in fairs and markets, and wheresoever they should buy and sell; which grant was confirmed by Henry II. And again, by Edward I.—Edward III.—Richard II.—Henry IV.—and Henry V.—and in the reign of Henry VI., by Parliament. It was also recognised by Queen Elizabeth, in the 31st year of her reign. So that the rights of *Truro*, and its burgesses, undoubtedly continued the same from the reign of Henry II. down to the 31st year of Queen Elizabeth. That they ought afterwards to have continued the same, will be hereafter shewn by the subsequent documents.

Andover. This king also gave a charter to the *men of Andover*, granting them a guild merchant, acquittance of toll, &c. as the citizens of Winchester.

This was also confirmed by Henry III. in the 12th year of his reign.

Coventry. It appears that the liberties of *Coventry* were seized in this year, in consequence of Earl Hugh having been, in conjunction with his tenants, an active participator in the rebellion against the king. But in 1181, upon a fine of 20 marks being paid, the franchises were restored: and the king confirmed a charter of Earl Ranulph, which granted, “that the *burgesses* should hold their possessions in *free burgage*, with the same freedoms as the burgesses of Lincoln. That they should have a *port-mote court*, to hold pleas of every thing concerning themselves. That they should elect one man from among themselves, skilled in the laws and customs, to be judge over them. Whatsoever foreign merchants should be brought there for the advantage of the town, might reside peaceably, without being injured or unjustly impleaded. If any foreign merchant should deal

* Brady, 93.

improperly, he should make satisfaction for it in the *port-mote*." And the king for himself granted the following important privilege: "That whosoever should come to *inhabit* there, from the day of his beginning to build, for two years following, to be free from all payments whatsoever." Henry II.

The pipe rolls, to which we have referred in the reign of King Stephen, continue also in this, and contain amongst other things, the fee-farm of London—the aid of the city of *Norwich*—*Yarmouth*—*Ipswich*—*Guildford*—*Southwark*—*Huntingdon*—*Cambridge*—*Colchester*—*Hertford*—*Bedford*—*York*—the city of *Lincoln*—*Stafford*—*Tamworth*—*Nottingham* and *Derby*—the city of *Gloucester*—borough of *Hereford*—*Calne*—borough of *Worcester*—and the city of *Rochester*. Pipe Rolls.
1157.

There are also separate entries, distinct from the counties, of the accounts of the *fee-farms* of *Windsor*—*Colchester*—*Wendover*—*Lincoln*—*Farringdon*—*Nottingham* and *Derby*—*Northampton*—*Winchester*—and *Southampton*. Some of the fee-farms are divided into the old and new farms. Also entries of the free gifts of some places—the forfeitures of the burgesses of *Bedford*. The tellarii of *Lincoln*—*Nottingham*—and *Winchester*—pay for their guilds—as well as the fellones of *Winchester*; and the tellarii, bollingarii, goldsmiths, bakers, and the men of *Holywell*, in *London*. Fee-farms.

In many places, entries are found of sums paid for the restoration of manors; and the sheriff of *Hampshire* renders a *special* account of a sum due in the firm of the city of *Winchester*, which it owes in the firm of the county. There are also many instances of places paying fines for not prosecuting thefts and murders; and other pleas of the crown, &c. Also for receiving a person excommunicated. Of an individual, because he *dwelt in a place without pledge*. Of a township, because they *permitted men to be without pledge*. Also vills, for fugitives whom they had pledged; and counties for false judgments. Manors.

From hence it is evident, that, at this æra, the spirit of the Saxon Laws was still acted upon.* And we find 12 men

* Mad. Fir. Bur. p. 87, 88, &c.

Henry II. from Dover, and 12 men from Sandwich (recognized, and acting as jurors), mentioned in a charter of Henry II. to the monks of Canterbury.*

The rolls continue in the same manner in the 3d year of Henry II., and the observation may be made generally with respect to the whole of them, that the return of the aids and fee-farms of *all* the cities and boroughs seem to be in substance the same; including *London, Canterbury*, and all the other places we have before mentioned—as well as the entries of the different guilds within them.

It is indeed impossible, after a careful inspection of the records of this time, to doubt that they were all at this period of the same constitution, though occasionally particular facts may transpire with respect to one borough, when the history of another is silent upon the same point.

York. Thus we find an entry of an account rendered by the citizens of *York*, and also of Cambridge, for the liberty that they might not plead in the courts without their respective cities: an express recognition of their separate jurisdiction. And it will be clear, from the numerous charters we have already quoted, and shall cite hereafter, that the same liberty existed in other boroughs, though not specified in the pipe roll.

Cambridge. *Cambridge* also had a grant of the town at fee-farm, and that the sheriff should not interfere.

Oxford. This king confirmed to *Oxford* all the privileges it had in the time of Henry I.

Southampton. 1157. The reeve of *Southampton* is mentioned in the roll of the 4th of Henry II., which is much more in detail than those of the 2nd and 3rd years:—but still no essential difference is apparent even in this lengthened roll, with respect to cities and boroughs; or the guilds.

Totness. 1179. In the 26th year of Henry II. the *burgesses of Totness*† paid a fine of five marks, for *setting up a guild without authority*.

This is an important fact, as clearly establishing, that the borough was distinct from the guild:—for Totness was undoubtedly a borough in the time of William the Conqueror,

* Car. Ant. S. S. 14.

† Mad. Exch. p. 391.

if not before:—and the *burgesses* are the persons who are ^{Henry II.} here fined, for setting up a guild without authority; so that it is evident the town was a borough long before; and that the burgesses, a pre-existing body, had subsequently set up the guild there, without the proper authority from the crown.

Besides the guilds which were duly granted by the king's authority, there appear to have been certain *adulterine* guilds; the aldermen of which paid amercements for setting them up without a proper grant:—as the guild of gold-workers in London—the guild of bochers—the guild of Holywell—and others.*

London

G. 1. 1. 1.

And in subsequent reigns, there are many entries of a similar description.

Madox, in his *Firma Burgi*, has made a collection of many places *not incorporated*, that were charged to the king, upon the ground we have before mentioned:—some for unjustly taking toll—others for not pursuing offenders—others for receiving offenders—others for allowing persons to *reside* in the burgh, town, or vill, *without giving pledge*; as the *Villata de Schepeton pro Willelmo Haiward*.†—*Villata de Bastenden quia permisit homines sine plegio*.

With respect to the history of the Irish boroughs, it was in the commencement of this reign, that Pope Adrian granted a bull to Henry II., for the subjugation of Ireland:—after which, the king a second time confirmed the laws of King Henry I., which are stated to have been neglected in that of King Stephen.

Ireland.

In this year, we have a very early instance of the use of the word *inhabitant*, synonymously with *burgess*, in a grant by Hugh Pudsei, Bishop of Durham, to the burgesses of *Gateshead*; in which (amongst other things) it is directed, that no forester, within the limits between the bishop's forest and the borough, shall lay hands upon any *burgess* or *inhabitant*. That these words are used as synonymous, and not as distinguished from each other, is confirmed by the general

1164.

inhabitant.

Answered
as per T. J.

* Mad. Exch. i. 562. Mag. Rot. 27, 32, & 33 Henry II.

† Mad. Firma Burgi, p. 64.

Henry II. tenor of the document, which speaks of the privilege of the burgesses having common of pasture, in respect of their houses—and grass rushes—with turf and wood for fuel. Their burgages are also mentioned—which justifies the inference, that they were householders. And their goods being protected within the limits of the borough, shows—that the privileges were for those *residing* within the limits:—particularly as the burgesses going into any part of the bishop's land, are to have the king's peace—referring, no doubt, to persons going from the borough, for temporary purposes, into the neighbouring districts.

Shrewsbury. *Shrewsbury*, at this period, affords an instance of the use of *lot and scot*, as applied to those who were to enjoy the privileges of the place. This king, in the 11th year of his reign, granted a charter to the *burgesses* of *Shrewsbury*, that no one should buy or sell within the borough, unless he be in *lot and scot*, and in assizes and talliages with the burgesses.

Constitutions of Clarendon. 1164. The Constitutions of Clarendon, which were made in the 10th year of this reign, require a few observations; inasmuch as they tended much to curtail, or at least, define the power of the church: and rendered the ecclesiastics, in some degree, subject to the king's court; particularly as regarded lay fees. They produced some few exceptions to the general rule—that ecclesiastics were altogether exempted from lay jurisdiction. And in some cases, even the trial of 12 lawful men was to be adopted, in matters in which persons of religion were engaged.

Villain. In these Constitutions also, the capital minister of the king's town is mentioned.* Castles and boroughs are spoken of, as distinct from each other. And in the last of these laws, it is provided, that no *villain* ought to be ordained, without the assent of the lord, upon whose land he was acknowledged to be born:—a provision which was necessary, as ordination or dedication to religion, would have made him free from the jurisdiction of his lord.

1169. The king, to limit the extortions which had been com-

* Wilk. 321, et seq.

mitted by sheriffs,* after inquisition made, displaced the Henry II. greater part of those officers throughout England, and obliged Sheriffs. them to pay forfeitures for their conduct:—a strong proof of the oppressions and extortions, which were at that time practised by them; and which were probably the cause of the numerous charters of exemption from their jurisdiction and interference, to be found in the succeeding reigns.

The king, at the commencement of his reign, had meditated the conquest of Ireland; and, in his 19th year, we find that he granted a charter to *the men of Bristol*, that they might have the city of *Dublin to dwell in*, with all the liberties and free customs which they had at Bristol. This probably was in expectation of the emigration of a considerable number of the citizens from Bristol to Dublin, where they were desirous of transporting, with themselves, under the authority of the king, the privileges which they had before enjoyed in their own city. 1172.
Bristol.

In the succeeding year, this charter was confirmed; and the burgesses of ~~Ireland~~ were discharged from passage and portage, and other customs. 1173.
Dublin

This document proves, that the citizens of Bristol had previously enjoyed privileges;—and that they were permitted to emigrate to Ireland, and possess them. It is also clear, that the first privileges enjoyed by the *burgesses of Dublin, were the same as the boroughs of England*; from which as a common stock, Bristol and other boroughs were derived:—and from hence the fair inference is, that the Irish boroughs were in substance the same as the English, Welsh, and Scotch. Dublin.

During the Saxon dynasty, *Exeter* was governed by a port-reeve, and divided into four hundreds, or *wards*, over each of which an *alderman* presided. † Exeter.

A charter was granted in this reign to the citizens, giving them the custody of the castle, and exemption from customs, &c., and a general confirmation of privileges.

The burgesses of *Gloucester* also received, at this period, a grant from the king—of all customs and liberties, through Gloucester.
1175.

* Wilk. 327.

† Neck. Hist. Exeter, p. 24.

Henry II. his whole land, of toll, and all other things, as the citizens of *London* and *Westminster* had in the reign of Henry I.*

1176. In this year, there was a council at Nottingham, in which the circuits of the justices in eyre were defined, as it is said, by the "common council of all."† Three justices itinerant for each circuit, were nominated. And it seems, that at this period, the dialogue concerning the exchequer, to which we shall hereafter have occasion to refer, was compiled by Jervaise of Tilbury.

Constitutions of Clarendon.

The king, in this same year, renewed, at Northampton, the Constitutions of Clarendon,—particularly providing for the trial of pleas by the crown, by *twelve free and lawful men.*‡

A person charged with any felony, &c., by the *commonalty of the county*, is required, under certain circumstances, to depart from the kingdom in 40 *days*. And there is an express provision, that it shall not be lawful for any one—neither in a borough nor in a town—to receive any *stranger*, as a guest, in his house beyond one night, whom he is unwilling to produce to do right; unless he who takes him as a guest, should have reasonable excuse—so that the host of the house shall show him to his neighbours; and when he departs, he should go away before his neighbours, and by day. The reeves of the hundred or borough are spoken of, as well as the lawful men.

The other provisions appear to be confirmations, or extensions, of the law, as we shall see it detailed by Glanville; but it is added, that no clerk shall personally be brought before a secular judge—unless concerning the forest, and a *lay fee*, from whence service is due to the king or other secular lord.

Ireland. When Prince John was sent to the government of Ireland, it is stated, that he divided the land amongst the principal nobility. The castles, cities, and demesnes, are spoken of; but no mention is made of the boroughs—which might be considered a mere accidental omission, if we had

* Rudder's Hist. of Gloucestershire, p. 121.

† Wilk. 332, in fine.

‡ Wilk. 330.

had any previous traces of boroughs in that kingdom. But ^{Henry II.} it must be remembered, that the only burgesses of Ireland which have previously occurred, were the new settlers in *Dublin*. However the city of *Cork*, and the "*Cantred*," a term we shall hereafter see was also common in Wales, are mentioned, about the same time, as doing homage and fealty to the king.

GLANVILLE.

1180.

At this period we have an early compilation of laws, which usually passes under the name of "*Glanville*,"* the then chief Justiciary of England; but which appears in a great degree, to have been taken from the *Regiam Majestatem* of the Scotch laws, to which we have before referred. It is, like *Domesday*, written chiefly with reference to the tenure of lands, and freehold rights: nevertheless, it affords many direct and plain inferences, with respect to the different classes of persons, of which society at that time consisted, and of the rights which they enjoyed. This compilation appears to have remained in manuscript till 1554, when Sir William Stanford, a judge of the Common Pleas, first caused it to be printed.† The suggestion, that it is partly copied from the *Regiam Majestatem*, has some probability; although by many authors it has been supposed to have been the first undertaking of the kind in any country in Europe. We have however previously given the Scotch laws, in the date which they claim; and here introduce those which are material in *Glanville*. But it is altogether unimportant to our inquiry, which preceded the other; as they were no doubt nearly contemporaneous, and the substance of the one borrowed from the other.

It has also been doubted by some lawyers, whether *Glanville*'s work was admitted as an authorized compilation of the English law. In *Plowden* it is said that "*Bracton* and *Glanville* are not writers in our law:"—but this seems by

* See the able translation of Mr. Beames, and the valuable notes added to it; from which we have had the advantage of obtaining many references.

† *Inst.* iv. 345.

Henry II. Saunders in Stowel's case, to be the only dictum doubting their authority.* Reeve, in his history of the English law, calls it rather a compendium than a finished tract:† which is in some degree justified by the prologue to the work,‡ where it is said, that it is impossible to reduce to writing, the laws and rights of the kingdom, as well on account of the ignorance of the writers, as of the confused multiplicity of the laws.

Old
Sarum.

The enumeration of pleas of the crown, in the second chapter, appears to correspond precisely with the Saxon laws. And an important principle, to which we shall hereafter have occasion to recur, when we speak of Old Sarum, and the other decayed boroughs, is contained in this chapter: in which, having first referred, (as commentators read the passage,) to the sheriff's tourn, it is added, that *it belongs to the sheriff, upon the default of the lords to take cognisance of criminal pleas*;—which is obviously introduced to prevent a defect of justice. So that if a special jurisdiction, within any local limit taken out of the county, should prove defective, on account of those who are entitled to the jurisdiction being unable, or neglecting to exercise their powers, and administer the law; the general jurisdiction of the sheriff would re-attach upon it. So that whenever Old Sarum, or any other place, had ceased to have such a population, as could continue its separate jurisdiction, it ceased to be a borough, and the sheriff's jurisdiction revived. The general application of this rule to all similar defaults, is afterwards recognized in the fourth chapter; in which pleas of native bondsmen are mentioned; and instances will occur in the course of our inquiry, where boroughs have ceased to exercise their exclusive privileges, on these and similar grounds.

Chap. 19. In the 19th chapter we find allusion made to the *lawful men* of the county, (*legales homines de comitatu.*)

Chap. 25. In the 25th, the limitation of 40 days, a period of time so frequently adopted in the English law, is applied to essoigns, or excuses for not appearing. And in the event of

* P. 357. † Vol. i. p. 222.

‡ Sir E. Coke's preface to his 8th Rep. and preface to his 10th Rep. p. 24.

the party having gone to Jerusalem, the other usual period Henry II. of a year and a day, is allowed.

In the 30th chapter, we have a striking instance of the Chap. 30. Sheriff's Tourn. general attendance which was required at the sheriff's tourn, — for it is said, if the sheriff gives orders to the summoners in the county court, they cannot contradict the court:—which seems to be founded on the principle adopted with respect to the tourn and leet, that what takes place at them shall not be traversed; inasmuch as every body being by law presumed to be present there,—they are taken to have notice of what had occurred in these courts.

In the first chapter of the second book the "*liberi homines*" of the county are mentioned; as well as the "*liberos et legales homines de vicineto.*" And that no *villain* should be a witness—seems to be proved by the claim of the demandant, which concludes with this verification; "and this I am ready to prove by my *freeman.*" Book ii. Chap. 1.

In confirmation of the nature of the "law-worthiness," Law-worthy. which we alluded to in our observations upon the first charter of William the Conqueror to London, we find that it is provided in this chapter, that the champion who is defeated, shall lose his law; "*omnem legem terræ amittet,*" whereby he becomes in effect, infamous and an outlaw.—In the Mirror,* and in the second and third Institute,† it is said, "he shall lose his free law."

The seventh chapter speaks of the advantage of trial by Chap. 7. the grand assize, over that by battle; as well in the saving of labour and expense to the poor, as also that it is "by *the oaths of 12 lawful men at the least,*" instead of one.

We have also an expression in the 13th chapter, which Chap. 13. shows, that persons not belonging to the particular local district, were designated by the term, which afterwards so frequently occurs, of strangers, ("*extranei*") that is, living *without* the district.

In the third book, the advowson of the church in the Book iii. Chap. 2.

* 2d Inst. 247. 3d Inst. 221.

† Cap. 19. *Legem terræ amittentes perpetuam infamiae notam inde merito incurret.*

Henry II. *town* occurs. But it should be observed, that there is no
Parish. mention of "the *parish*." Nor in any part of this treatise, although the churches—and their rights—and jurisdiction—are frequently mentioned and discussed, does this term occur.

Book v.

The fifth book relates to *villainage*. It commences with the plea raising the question of the state or condition of individuals in society. Which occurred in that time when one claimed another, from a state of freedom into villainage; or when one in villainage, sought his liberty. If a person claimed another to be in villainage, as his native bondman, he was to have a writ of *neifty* directed to the sheriff: by which he should claim the villain before the sheriff of the place, against him who held him in villainage; and if the villainage was not denied, then the plea respecting the villain should proceed before the sheriff, the claimant, and the person who had the villain. But if he who was demanded, said he was a freeman, and gave security to the sheriff, to prove the fact; then the sheriff should proceed no further, but the complaint should be before the king's justices, in the king's court.

In this chapter, we perceive the *villains* and *freemen* clearly contradistinguished from each other as a state and condition in society;* not as depending on tenure; still less as resulting from any connection with a corporation or corporate privileges.

The writ makes the same distinction we observed before. And in the proof upon the trial, in chapter 4, the evidence is to be by those of the same *stock*, by whose liberties, if they should be recognized and proved in court, he who claims his freedom, should be freed from the yoke of servitude. But if the liberty of those produced be denied, or if it is doubted, recourse should be had to the vicinage, that by their oaths it might be known, whether these men were free or not: and it should be adjudged accordingly. If, on the contrary, it should be proved, that those who were produced were native bondsmen, so that they came from one common stock with the claimant, then the vicinage should

* Hen. Hist. II, vol. iii. p. 189.

inquire who are the nearest related to the claimants : and ^{Henry II.} it should be adjudged accordingly.*

Other provisions are made, for determining the question of villainage or freemen.

From the whole tenor of this book, and the very particular provisions contained in it, no one can doubt, that *the whole question of freedom by birth*, is to be traced *as originating in the common law*,—and *has nothing to do with any corporate right or privilege*.

It is therefore evident, that the *usages*, which have been now so strangely imported, as connected with corporate rights, into the practice of many boroughs in England, are borrowed from this chapter ; as the proof by relations, of their freedom, is clearly the type of the admission by the father's right to freedom. The distinction between those whose rights were known and recognized, as being *born* within the place, is here also alluded to ; and distinguished from those, who not being born in the place, were not known or recognized as freemen,—and therefore were obliged to have their freedom established, by *proof* before the *jury* at the court leet ; or proved inferentially and necessarily by the finding of the fact, that they had lived a year and a day within the place, away from their lords, if they had any :—which absence, by the chapter we shall quote hereafter, would make them free.

The fifth chapter speaks of the many modes by which a person being in a state of villainage, could be emancipated into a state of freedom. First, by actual emancipation by the lord : next, by gift, or sale to another : and many others are enumerated in the *Mirror* :—there being no question, as we have observed before, that, from the spirit of our ancient institutions, so favourable to liberty, the modes of emancipation were from time to time increased—as the spirit of liberty spread, and the changes of society lessened the necessity for bondmen.

The general principle upon which villainage or emancipation depended, was that of the mutuality of service, upon

* See also *Mirror*, chap. 3, sec. 23.

Chap. 5.
Villainage.

Henry II. the one hand,—and protection, upon the other. If, by the default of the lord, that mutuality was in any way defeated, the condition of villainage was destroyed.

But there is one restriction upon the acquisition of liberty, which should be remarked. A villain could not purchase it with his own money; because all the goods of every native bondman were understood to be in the power of the lord—so that the villain could not redeem himself from bondage, by his own proper money, against his lord. But if any *stranger* (*extraneus*—that is, some stranger to the demesnes of the lord,) should purchase the freedom with his own money, the villain might always defend himself, in a state of liberty, against his lord. In the same chapter it is also expressly stated, that a person born a villain, though afterwards emancipated, might be objected to as a witness.

After which follows the passage to which we have so frequently adverted. “If any native bondsman shall have *dwelt* quietly—that is, quit, or without claim, for a year and a day in any privileged town,” (and from principles of law, the same rule would apply—subject to the qualification we shall mention hereafter—to his dwelling in any place, whether in the county at large, or in any city, castle, borough, or town,) “away from his lord, so that he should be in their community—to wit, the guild;” that is to say, so that he shall have been received as a citizen, or burgess, as one of their commonalty, subject, in the language of Domesday, to geld with them, or by the laws of William the Conqueror, to pay scot and lot with them; “he shall, by that act, be emancipated from villainage.”*

In Bracton it is said,† that if within the year the lord claimed the villain, then it would not operate as a bar to the lord. There is also a provision in the *Regiam Majestatem*, and the *Leges Burgorum* of Scotland, that if the villain remained away from his lord for *seven years*, it was conclusive evidence against the lord, by which his right was for ever barred. But that conclusion was not to be drawn

* Vide etiam Flet. lib. iv. cap. 11; et Co. Litt. 137, 6.

† Lib. i. fol. 6 B. 7 A.

against the king—upon the obvious ground, that the king ^{Henry II.} could be guilty of no laches; and therefore no lapse of time could bar the crown;—for the laches, or default of the king, never begins—the real meaning of the expression, “*nullum tempus occurrit regi.*” Therefore the summary of the law upon this head, appears to be this:—during the progress of a year, if a villain lived away from his lord, he might reclaim him as his fugitive; and, by giving notice to those with whom he dwelt, would be entitled to have his villain returned,—or could maintain his action against those who detained him. But if the villain dwelt in any place a year and a day, away from his lord, then the villain was bound, by the general law, to do his suit at the sheriff’s tourn, or court leet. And upon the jury presenting the fact of the residence, he would be entitled and bound to be sworn as a freeman; and enrolled and recorded as such. Such a title could not be defeated, but by a record of equal or superior authority. And therefore, after such inferential proof, and record of freedom, the lord could not reclaim his villain, but by due course of law; and, consequently, he was driven to his writ *de nativo replegiando*, which he might have at any time within seven years; but after that period he was barred for ever. Hence it is clear arose the conclusive evidence of the freedom by service and *residence*, under a contract of apprenticeship for seven years, in the manner we have already explained. But even that time was not conclusive against the king, and therefore such a claim of freedom was not perfect, unless sanctioned by the grant of the king. Hence no such claim could be set up in the sheriff’s tourn, because that court existed under the common law, and not by charter. On the contrary such a claim would be conclusive, even against the crown, within the jurisdiction of a court leet, which could not exist, being an exception from the common law, but by the charter of the crown. Hence it is that Glanville uses the term of “*privileged town*,” as applied to places enfranchised by the king’s charter.

In the preceding clause of the same chapter it is said, “he

Henry II. " who has obtained his freedom may defend himself for ever against his lord, or any of his heirs, as long as he can legitimately prove this in court, either by *Charter*, or any other manner." The *Regiam Majestatem* adds to the passage which excludes a person from giving proof, or waging his law, if born a villain, notwithstanding he has been knighted, this further provision:—" Except he received his liberty, and was made free with the license, good will and special command of the king,"—which are the words usually inserted in the king's charter for that purpose; and in the case of boroughs are applied in the aggregate to all the inhabitants in the borough; and under this description the person mentioned in *Glanville* would fall, as a person who had dwelt a year and a day in a chartered borough.

Chap. 6. This book concludes with a passage relative to the villainage or freedom of the children depending upon the condition of their parents. But, as it is an intricate subject, and not immediately within the scope of our inquiries, it is unnecessary for us to enter upon this field of speculation.

Book vi. In the succeeding book, as to dower, the *perpetual succession of ecclesiastical bodies*, and the effects of grants which were subsequently called grants in mortmain, seem to have been understood. For it is specially provided—that if a church is founded, the wife shall, after the death of her husband, have the free presentation; so that in the case of a vacancy she shall give it to any proper clerk. But it is added, she cannot give it to any *college*, for by that she would take away the right of the heir himself for ever—adopting most distinctly the doctrine of grants in mortmain; which, however, it should be remembered, is applied alone to ecclesiastical bodies.

Lib. II. cap. 16. And in the *Regiam Majestatem* this appears more distinctly, for it is added, " seeing a college never dies."

The remainder of *Glanville* contains little to illustrate our present subject; we therefore pass it over without observation, excepting to remark, that the *liberi homines*, and the *liberi et legales homines*, occur frequently through the succeeding books.*

* Wilk. 334.

Even, therefore, at this early period of our history, we ^{Henry II.} have been enabled clearly to establish, by authentic documents, and without the possibility of doubt, the distinction between the bond and *free*, as a part of our ancient common law; and the rights of freedom, which sprung from free birth. We have, therefore, decisively negatived, that the term of “free men,” so common in our law, was connected with corporations. We have also negatived the existence of any corporations at this period, in which all authors agree. And we have seen, that the early charters are granted to the *men of the place and their heirs*. We have before observed, that “guild” was a term used by our Saxon ancestors to denote the payments to the public funds, not only within boroughs, but generally throughout the county;—in the shires at large—in hundreds—and other divisions; and that the lands of some knights were exempt from guilds.

We shall show hereafter, that “geldable” was the ^{Guilds.} term emphatically applied to the county, as being the general district over which such payments were to be levied. That in progress of time any body of persons contributing to the common stock were called “guilds;” such bodies existing in boroughs, though distinct from the general body of the burgesses;—and not necessarily connected with borough rights or municipal government.

We have also seen, that the laws of our Saxon ancestors were, in point of fact, continued during the Norman dynasty; and that the institutions of the country persevered in maintaining a rigid adherence to the duties and responsibilities arising out of local residence, which was the sole foundation of all rights and obligations.

In conclusion, before we quit this reign, we should re- ^{Fee-farm.} mark, that the ancient fee-farms—the aids of boroughs and cities—and their *reeves*, are frequently spoken of in the laws of King Henry, which we have quoted. And we must remember, that the pipe rolls constantly refer to the fee-farms as generally paid.

It has been supposed by many writers—and sometimes

Henry II. in the courts of law—that every grant of a borough at fee-farm to the burgesses, made them a corporate body:—because otherwise their successors could not be bound to pay the rent, and the king might therefore lose his intended profit of the land.* But this doctrine has been most successfully combated by Mr. Madox, who expressly states—that many of the king's towns which were not, as well as others which were corporate, were charged to pay to the king yearly a firm for their town; that is to say,—“towns not corporated might and did hold their town at firm, in like manner as the corporated towns were, by the king's favour, wont to hold.” And he cites many examples from the great rolls to establish this point—as Cosham—Hareham—Newburn—Robiry—Jaclinton—Corbrig—Odiham † (in Hampshire)—Aulton—Cokeham—Bray—Fekeham—Apthorp—Clyve—Brikestok—Geytinton—Torp—Selveston—Mannesfield—Raghenild—Derlington—Climeston and Lifton. ‡ In all of these, the *men* of the place are charged with the fee-farm to the king; and it cannot be supposed that those who contributed to this payment could be any separate or select body; or that any persons not inhabiting in the place could be included. Either of such circumstances would be so inconsistent with the nature and obvious reason of the payment, that it must be assumed the persons here described under the term “*Men*,” were the inhabitants of the place.

And if this inference be correct with respect to these places which were never boroughs, nor incorporated, the same will hold from the use of similar terms, when applied to boroughs or to places which were subsequently incorporated; of which numerous instances are to be found upon the same rolls, particularly with respect to talliages, which also were paid by places not incorporated. Thus, the *men of Ipswich* in several years of this reign, render an account for

* Bro. Abr. tit. Corporations.

† To the *men of this place*, King John granted the town in the 6th year of his reign.

‡ Mad. Fir. Burg. 54.

having their town in their own hands at fee-farm. The *men* Henry II. *of Newcastle* also pay their talliage; and a variety of other places, which it would be tedious to enumerate.

In the 27th year of Henry II., certain directions were issued 1180. by the king, for providing arms; and orders are given, as to what every lay-man should have, and what all burgesses, and all the commonalty of freemen should procure.

The *liberos et legales homines* of hundreds—*visnes*—and boroughs—as separate divisions of the country—are specified; and it is provided, that no one shall be received to the oath of arms, unless he is a *freeman*.

In a statute compiled at this period, we find “*parishes*” 1186. mentioned, which has not occurred in any document we have Parishes. before referred to, excepting once in Domesday. Burgesses and villains are also spoken of, under the name of *Rustici*.*

In this year, a survey of the county-palatine of *Durham* was made, called the “*Boldon Book* ;”† but which does not afford any matter to illustrate our present researches. 1183. Boldon Book. Durham.

Henry II. also granted a charter to the citizens of *York*; as appears by the recital of one of King John to that city; and the same to the *burgesses of Appleby*. York.

The *burgesses of Newcastle-upon-Tyne*, also received a Newcastle-upon-Tyne. grant, exempting them from toll; which is referred to, and confirmed by King John, in the 2nd year of his reign, and also in the charter of Henry III.

This place was doubtless, a *borough by prescription*; because, although it is not so mentioned in Domesday, its “*burgesses*” were, in the 14th of Henry II., before the time of legal memory, amerced for swearing a knight.‡ And the charter and privileges before referred to were granted to the *burgesses*. 1168.

But it was not a *corporation* by prescription. For although there are many early charters granted to the *burgesses*, and a regular succession of them can now be found—the first was to them and their *heirs*—and none of them speak of any incor-

* Wilk. 336.

† Vide 1st Supp. Vol. of Domesday, published by the Record Commission.

‡ See Madox's Exchequer, i. 558.

Henry II, 1589. 31 Eliz. poration till 1589, 31st of *Elizabeth*; when the queen, by the express words of her charter, *incorporated* the burgesses and *inhabitants*, by the name of, “the mayor and burgesses of the town of Newcastle-upon-Tyne, in the county of the same town;” and not till then were they incorporated.

Winchester From a recital, in a charter to Portsmouth of the 5th of Richard I., it appears that Henry II. had granted one to Winchester; but what were the provisions of it, does not now appear.

Preston. A charter was also granted to *Preston*, making it a borough:*—the privileges being subsequently confirmed by John, when Earl of Moreton, and before he ascended the throne, as well as by Henry III. and Edward III. The persons who exercised the right of election at that place, as the “burgesses,” were, till the reform act, the “inhabitants,” without any other limitation of scot or lot, or otherwise:—a right by far too general and unrestricted; and as inconsistent with the law on the one hand, as the more restricted rights in many places, are on the other; the usage in both instances being contrary to the general law, and proving their illegality by their differing from each other; at the same time that they establish the danger of allowing such usages to prevail—and grow up in contravention of the law.

1188.
Bristol.

John, the king's second son, then Earl of Moreton, granted in the 34th year of the reign of Henry II., a charter to the burgesses of Bristol, *dwelling within the walls and without, as far as the boundary of the town*;—confirming to them all their liberties and free customs, which they had enjoyed in his time, or that of his predecessors, and declaring them to be as follows:—That *no burgess* should plead or be impleaded out of the walls of the town, in any plea, except those relating to foreign tenure, not belonging to the *hundred of the town*;—that the burgesses should be quit of murder within the bounds of the town, and should not wage duel;—that no one should take lodgings within the walls, by assignment or by livery of the marshal, against the will of the burgesses;—that they should be quit of toll, &c.;—that no one should be

* Brady, p. 98.

condemned in a matter of money, unless according to the law ^{Henry II.} of the hundred, viz., by forfeiture of 40s.;—that the hundred court should be held only once in a week;*—that the lands, tenures, mortgages, and debts throughout the land, and the lands and tenures which were within the town, should be held, claimed, and enjoyed, according to the custom of the town;—that pleas be held according to the custom of the town, with regard to debts and mortgages lent in Bristol;—that no stranger should buy of a stranger—nor keep a wine shop, (unless in a ship)—nor remain more than *forty days* within the town;—that no burgess should be distrained, unless he be debtor or surety;—that the burgesses might marry without licence; and the lords should not have wardship of their sons or daughters, by reason of lands out of the town;—that the burgesses might have all their reasonable guilds, as well or better than they had them in the time of Robert, and his son William, Earls of Gloucester;—that all tenures within and without the walls as far as the boundaries, should be held in *free burgage*, viz., by *land gable service*; which they should pay within the walls. Permission is given to build upon all void places, contained within their boundaries, &c. And the privileges granted by this charter, were to be enjoyed by the *burgesses* and their *heirs*.

This charter describes the burgesses with somewhat more particularity than is usual; the grant being “to his burgesses dwelling within the walls, and without as far as the “bounds of the town,” which are defined. This seems clearly to establish, that at that time *all the burgesses*, who were to enjoy the privileges, were *inhabitants* within the town: and there is not any ground for assuming, that *any of the free inhabitants, paying scot and lot, were excluded from their body*.

Inhabitants.

The charter then gives in effect those privileges which were afterwards so commonly granted by King John during his own reign, and by his immediate successors, to this and many other places. From the nature of which franchises further inferences arise, that the burgesses were the inhabi-

* This was the Civil Court, and not the Court Leet.

Henry II. tants of the place. That, for instance, of not pleading without the walls of the town, could not be enjoyed by any but an *inhabitant*;—and it would lead to great inconsistencies to suppose, that some of the inhabitants should not plead out of the walls, and that others should; because the sheriff and his officers would have to interpose their authority as to part of the inhabitants, and would be excluded as to the rest. But this privilege was, in fact, intended, both in this place and in others, to exclude the jurisdiction of the sheriff, and to subject the “inhabitants” to that of their own “hundred court,” which is spoken of in the next line of this charter.

Stranger. A similar inference is supported by the exemption of the burgesses from the fine for murder, being confined to the bounds of the town; and still more particularly, by the burgesses being contradistinguished from the “*stranger*,” who in the Latin is described as “*exterior vel extraneus homo*;” and as one “*qui non fuerit de villâ*.” The provision, “*nemo capiat hospicium infra muros*,” with others, prevented any person from being admitted into the town against the will of the burgesses, according to the common law, as contained in the Saxon laws, Britton, Bracton, and Fleta. The same was also practised under the poor laws: by which no person could come to live in a place for 40 days (as is mentioned afterwards in this charter) without notice to the tithingman, or officer of the parish. To that law may be attributed the real *origin of the admission of strangers as burgesses*; which, under some circumstances, could not legally be effected without the assent of the whole body. It cannot fail to be observed, that the other privileges also granted by this charter are of a local character, and clearly to be enjoyed in the town: and it is reasonable to infer, that they were intended for the benefit of all the inhabitants—the term, “Men of Bristol,” (“*Hominibus de Bristol*,”) being used as synonymous with “Burgesses.” It must be remembered, that the lands within the town are to be held, according to the custom of the town, in *burgage tenure*.

Præpositus The principal officer of the king is the “*præpositus*,” in the Saxon language called “*reeve*,” in the Norman, “*bailiff*,”

“provost,” and “maire:” all, in effect, meaning the same officer, notwithstanding so much importance has in some places been attributed to the appellation of “mayor;” as if that term was peculiarly applicable to corporate officers; whereas it only described the usual functionary of the crown, appointed originally by the king, to collect his dues: but as such persons were often guilty of great oppressions, the people of favoured places obtained charters, sometimes upon the payment of considerable sums of money, for the right of electing “*one of themselves*” to fill that office—a privilege which, the king possessing for his own advantage, could legally grant to others. Many of the liberties are those which the law would give to all persons holding freely and in socage, by burgage tenure*—as freedom from wardship and marriage. It has been often supposed, that the guilds were the foundation of the burghs; but it will be clearly seen, that those here spoken of, are something within the burgh, and belonging to the burgesses; and not the burgh itself, nor the essential characteristic of burghship. It should, in conclusion, be observed of this charter, that it cannot be said to have created a corporation, even by implication; because, in addition to the general answer, that none of the early grants were charters of incorporation,—for they were not introduced till many years afterwards—this is expressly to the burgesses and their *heirs*, and not to their *successors*.

Henry II.

1189.

Guilds.

IRELAND.

In this year we find another borough in Ireland besides Dublin, (to which we have before referred,) receiving a grant, not from the crown, but from the Earl of Pembroke, with the consent of Isabella his wife; and as a confirmation of our former remark with respect to the Irish boroughs, it will be perceived, that the provisions of this charter to Kilkenny nearly resemble those granted to London, and the other cities and boroughs in England. It mentions also the 40 days, to which such frequent reference is made in the Saxon and

Kilkenny.

* See Litt. lib. 2, c. 10, sec. 162, et seq.

Henry II. English laws ; and contains a grant of a merchant guild : regulating (like the English charters) the tenure of the burgages : and the provisions are for the benefit of the persons *inhabiting* in the borough, as they are in those of England ; the grant also being to the burgesses and their *heirs*.

It is as follows :—

William, Earl of Pembroke, with the consent of Isabella his wife, granted to his *burgesses of Kilkenny* the liberties,— that no burgess should be called to answer for any cause which should arise within the bounds of the borough and castle, or any otherwise than in the hundred of the town, except in pleas which concern the men of his household. The hundred to be held in the town. Homicide within the bounds should not be reputed murder; and no burgess should be called to trial by battle, unless it ought reasonably to be done. The burgesses to be free from toll, &c.; and not to be amerced unless by the judgment of the hundred, &c.; and the ameracements were fixed for the breach of the assize of bread and beer, watch and ward. The hundred was to be held only once a week ; and no burgess was to be called in question for miskenning.* Provisions were then made for giving of bail ; for the improper taking of toll. No foreign merchant was to sell cloth by retail, or have a tavern for wine within the town, except *for forty days* ; and if he did so, the articles should remain for the judgment of the *burgesses* for the profit of the town. Powers were given to the *burgesses* to marry their children ; and no lord of whom the burgesses held foreign tenements, should have the custody of their children or widows. It was also granted to the burgesses, that they might have a *merchant*, and other guilds, and all liberty belonging to them, as the custom was of other good boroughs.

Reference is made to the tenure of tenements in *burgage* : and it is also provided, that no burgess should be compelled to pledge his goods, unless security was made for returning them at a certain time. If any *burgess* should willingly lend

* So in London and Bristol.

his goods to the bailiff of the earl's castle, if no certain time was fixed for their return, it should be done in 40 days. Henry II.

Powers were given to the burgesses to make *free tenants* by 40 feet of land; so that they might have their liberty in common with the burgesses—and that the *burgesses and their heirs* should hold their *burgages* freely and quietly for ever, at the rent which Galfridus, son of Robert, first established, to wit, 12*d.* annually for a burgage with its appurtenances; to be paid half at Easter, and half at Michaelmas. No assise of victuals was to be made in the borough, unless by the consideration of the *burgesses* and bailiff.

SCOTLAND.

To resume the history of Scotland, as far as relates to the transactions in this reign, it appears that William I., the Scotch king, made sundry statutes at Perth,—the second chapter of which enumerates the bishops, abbots, earls, barons, knights, and freeholders as the persons who should appear before the justices in eyre. William I.
Scotland.
—
11 Hen. II.
England.
1165.

The second section of the same chapter directs, that at the beginning of every 40 days the sheriff should hold his court. Which explains the reason why persons not having resided in a borough for 40 days, were not entitled nor bound to be burgesses; because they continued to be suitors before the sheriffs till the next court; and if not present there, would be amerced, unless they had become legal suitors elsewhere: which, after 40 days' residence in a borough, they would have a right to be, on their own application; though they were not compellable till after a year and a day.

It may generally be observed of these laws, that they correspond with our own sufficiently to establish that they must both have had one common origin.

Chapter 23 directs, that every man between 60 and 16 should be sworn:—and afterwards specifies what each man should be provided with, according to the land he held. Cap. 23.

Chapter 35 directs, that the merchants of the realm should have their *merchant guild*, with liberty to buy and sell, within the bounds and liberties of burghs; clearly show- Cap. 35.

Henry II. ing that this was distinct from the borough, and the municipal government of the place.

Cap. 37. The 37th chapter directs, that no merchant stranger should buy or sell any merchandise without burgh.

Moravia. This king also granted to the burgesses of Moravia,* that no one should take bail of them throughout the land, for the debt of any one, unless for their own debt.

Inverness. The same king also granted a charter, that the burgesses of *Inverness* should be free of toll, and all customs upon their own chattels.—And prohibited that any one should buy or sell in that borough, or carry on in that county, without the borough, any merchandise, unless he was a burges or a *stall-keeper*.

The king also granted to the burgesses, for the support of the borough, the land without it, called Burghalew, to wit, between the mountain and the water, so that no one should have in it gainage or fishing without their license.

And he directed that the burgesses might enclose the borough, they afterwards supporting the fence.

Heirs. This king also made a third charter, by which he granted to Ganfrid Blund, his burges of Inverness, and his heirs;—to all his burgesses of Inverness, and their *heirs*; that they should never have battle amongst them, nor any other burges—nor other man should have battle against his same burgesses of Moravia, nor against their *heirs*;—but only their oath.

The king also granted to his *burgesses* of *Moravia* and their *heirs*, that they should make only half the oath, and half the forfeiture which other burgesses made; and that they should be free of toll for ever.

He also granted a fourth charter, by which he appointed Sunday in every week for a market day, and he justly gave his firm peace to all who came to it.

Inhabitants. The king also granted to his burgesses who should *inhabit* his borough of Inverness, “*all the laws* and right customs “*which his other burgesses, inhabiting in his other boroughs in Scotland have.*” And that no one should make in the baili-

* Wight on Elections, Appendix, p. 408.

wick of Inverness, without the borough, dyed cloth; against Henry II. the assise of King David, the king's grandfather—under the penalty of seizure of the cloth by the sheriff.

The king also prohibited that any one should buy or sell without the borough, any thing against the assise of King David.

Also that none should have a tavern in any country town without the borough, except where a resident (manens) knight should be lord of the town, and then he might have a tavern there, according to the assise of King David. Resident Knight.

The king's bailiffs of Inverness, are ordered to be assistant, as far as they could be, to the king's burgesses of Inverness, that they might justly support them in the enjoyment of the above rightful customs.

Of these charters it should be observed, that the first is a grant to the *burgesses* generally, without any mention of heirs and successors,—and the others to the burgesses and their *heirs*.—And it should not be overlooked, that these charters are, in effect, the same as those granted about the same period by the English monarchs to their boroughs in England:—these in Scotland also providing, like most of the English, that the burgesses should enjoy the same privileges as other burgesses and boroughs,—and confining the enjoyment of them to the resident burgesses.

Having thus collected the laws—the most important constitutions—the charters—and other records—which are to be found in this reign, we may deduce from them these important positions. Conclusion.

That at the close of this reign, so remarkable for the wisdom and vigilance with which the laws were administered, and for the cautious and reasonable reforms effected during it, the great division of society into the two classes of bond and free, still universally prevailed. That the distinction of villainage and freedom depended primarily upon birth, and secondarily upon emancipation on the one hand, and reduction to a servile state upon the other. That there are no traces of any municipal corporations, but that there

Henry II. are, as distinguished from them, direct recognitions of corporate succession in ecclesiastical bodies, who held to them and their successors: and the appearances of something like corporate existence in the guilds; which were, however, separate from the creation of the boroughs, including only a part of the burgesses, and having objects distinct from municipal government. It appears also, most clearly, that the charters at this period were granted to the burgesses and their *heirs*; so that every inference of corporate right or succession is altogether negated.

RICHARD I.

1189
to
1199.
Prescription.

We have now arrived at that important period of the history of this country, at which—by subsequent statutes in some instances, and the common law in others,—the time of legal *prescription* is fixed. And it being enacted, that, “no lands or tenements—rights or liberties, which had been enjoyed in the reign of Henry II. should require to be proved by any charter or document in writing; but that it should be sufficient to show they had been used in the reign of Henry II.,” and the common law having adopted the same principle, the first year of Richard I. is termed “the period of legal memory.” As it is a presumption of law, that all rights exercised before this time had a legal commencement; so it is most material clearly to define what privileges were enjoyed previous, and what immediately subsequent to this period; in order to place beyond all controversy the question respecting the existence of corporations by prescription. If it can be established that there were no municipal corporations at any time prior to this date, then the doctrine of corporation by prescription is decisively destroyed. We therefore proceed, with this view, to quote the documents

material to this point, which are to be found in the reign of Richard I.
Richard I.

This king granted a charter to the *burgesses of Colchester*,* Colchester. enabling them to elect bailiffs—hold pleas of the crown—to plead within their own borough, and not without; and that no other justice should intermeddle but such as they should elect.

That the burgesses should be free of *scot and lot, &c.*; and when summoned before the justices itinerant, they should be able to acquit themselves by four lawful men (“*legales homines*”) of that borough.

That they should not be obliged to receive guests, &c., and should be free of tolls.

We have in this charter (as in the former reigns) the grant of exclusive jurisdiction—the mention of *scot and lot*—and also the *legales homines*, without any appearance of incorporation.

Hugh Pudsei, Bishop of Durham, granted to his *burgesses of Durham*, freedom from toll, and the same free privileges as *Newcastle*.† And it is said, that at a very early period there was an *alderman* of Durham; but there is no appearance from this charter, or otherwise, of its being a corporation.

Richard I. granted a charter to the *citizens of Winchester*,‡ Winchester. of the merchant guild, that none of them should plead without the walls, excepting of foreign pleas, and the moneyers; nor should they make duel; and that they might discharge themselves of pleas of the crown according to the ancient custom of the city. And he granted, that all the citizens of the merchant guild should be quit of toll, &c. That none of them should be adjudged to an amercement of money but according to the ancient law of the city, which they had in the time of the king’s ancestors. That they should have the lands, tenures and pledges according to the custom of the city. That pleas should be held of their debts at *Winchester*.

The reeve of the town, and exemptions from other dues,

* By *Inspeximus* in charter of Edward IV. &c. *Mad. Fir. Burg.* p. 28, note.

† *Bro. Wil.*

‡ *Car. Ant. R. N.* 30. N. 19.

Richard I. are then mentioned. And all those who went to the city of Winchester with their merchandise, whether strangers or others, were to come, remain, and return in peace. All which privileges they were to enjoy *hereditarily*.

Merchant
Guild.

This charter differs from most we have seen before, and seems to have been a peculiar grant to those of the citizens of Winchester who were of the merchant guild. They are particularly described in that manner, and they could not be the whole of the citizens, because we have seen, by numerous charters, that the guilds included only a portion of them: and if these had been all the citizens of Winchester, they would not have been described in this special manner.

The charter was not, as was usual, granted to the general body of the burgesses. If we were to conjecture as to its *real* meaning, it would probably be best explained by recollecting, that no person could trade who was a villain, and, therefore, that admission into a merchant guild was *prima facie* evidence of a person being free. If the merchant guild had received into their body any person whose claim to freedom might be equivocal, at least as against the king, it was desirable that they should apply to the monarch to remove all doubts by granting to them this charter, which, under the law we quoted in the last reign from Glanville, would set the matter at rest as to the members of the merchant guild: all the other free inhabitants of the place paying scot and lot, would have their privileges and exemptions under the common law and the former charter. It must also be remembered, that let the nature of this charter be what it may, the privileges were granted to them to hold *hereditarily*, which decisively establishes, that although men of guilds were at that time often incorporated, yet, in this instance, they *were not*,—a point which would have been more important, if all the citizens had belonged to the merchant guild; but which, upon the whole, is probably more justly applicable to support the position we have adopted, of the guild being only a part of the burgesses;—and to establish, that the object of the charter was to put an end to any question of their hereditary right to freedom.

We find at this period a charter of William Longespee Richard I.
granting and *confirming* to the *burgesses* of *Poole* and Poole.
their *heirs*, all the liberties and free customs, which free, 1190.
citizens or burgesses, of the cities and boroughs of the king
had.

That the burgesses might from themselves, choose for the government of their borough, six burgesses, one of whom was to be appointed by William Longespee or his heirs, to be the provost. Also pleas were to be held six times in the year, for measures and assises broken. Provisions were then made respecting foreign merchants—and talliages. The charter concludes with granting to the burgesses herbage—as they had always been accustomed—firing—and turbarry.

Poole we have seen, is not mentioned as a borough in Domesday ;—nor are there any material documents relative to it, before this charter.

It appears however, that it was a borough before this time, and had *burgesses* who previously enjoyed privileges, because the charter speaks of their accustomed enjoyment of the right of common. The question in this borough (as in others) is, who were the burgesses? There is no ground for saying they were incorporated. There is not a single term of incorporation, nor any expression or implication, which leads to the inference that any corporation previously existed, or was intended to be created by this charter. The grant is to the burgesses and their *heirs*, not to their successors.—There is no indication of any selected body of burgesses. The six cannot be treated as such a body—they were not the burgesses, but six persons selected out of them, for a particular purpose; namely, that one of them should be eligible to serve as reeve, and that one of them might be elected to that office by the lord. As soon as that was effected, the purpose of their election was at an end, and they were resolved again into the general body of the burgesses.

A charter was granted to the *citizens* of *Bath*, who were of Bath.
the merchant guild, that they might be free from toll, like Bath.
the citizens of *Winchester*, who were of that guild.

The king also granted to the citizens of *Lincoln*, the usual Lincoln.

Richard I. privilege that they should not plead without the walls;* quit-
tance of murder within the city; and the *port-soke*,—a term
explained before, in the charter of London, as meaning the
liberty of the porte or town, which usually extended without
the walls. The charter also granted freedom from forced
lodgings taken by the officers of the king—from toll and
ameracements for money; unless according to the law of the
citizens of London. That there should be no *miskennings*.
That the burgh-mote should be held only once in a week :—
affording a strong inference that *all the inhabitants* were
compellable to attend there; otherwise such a limitation
would not have been introduced for their benefit. The bur-
gesses were to have their lands—tenures—pledges—and
debts, &c., according to the custom of the city. The taking
of toll from the *men of Lincoln*, was to be prevented by the
interposition of the *reeve*, who is mentioned twice in the
charter. All their liberties and free customs which they, or
the citizens of London have had, were confirmed to them
and their *heirs* to hold *hereditarily*—rendering a rent by the
reeve, for which office they were to elect whom they would.

Launceston So also there is a charter to *Launceston*, under the name
of the borough of *Dunheved*, granting that it should be a free
borough. That all the *men*, as well burgesses as others, be-
longing to the liberty, should be free of toll.

Cornwall. This appears to be the first grant to any borough in Corn-
wall: which may be worthy of observation: as it will be
remembered no *boroughs* in that county were mentioned in
Domesday, though the aid of the boroughs and towns of
Cornwall, were returned in the 23rd of Henry II.: and as this
charter expressly grants that Launceston should be a free
borough, and no allusion is made to any previous privileges
or customs, the probability is, that it was at this time first
so created. The grant that “as well the burgesses as others
belonging to the liberty,” should be free of toll, is probably
to be explained by considering the burgesses as those inha-
bitant householders of the borough who were the grantees
of the charter, accepted it, and were sworn and enrolled as

* Car. Ant. F. N. 16. N. 20.

burgesses under it. The “others” would be persons, who Richard I. coming to reside, and belonging to the liberty, were subsequently sworn and admitted. Being in substance, the same provision we shall so frequently meet with in the Welsh charters, which were usually granted to “those inhabiting, “or who should thereafter inhabit.”

A grant was also made to the *men of Rye, and Winchelsea*, Rye and Winchelsea. of freedom from toll, &c., and all custom.* “That they “should be quit of all their things, and market as our *free-men*: and of *shires and hundreds*, that they do not answer “or be impleaded otherwise than as the barons of *Hastings* “of the Cinque Ports, and as they were accustomed in the time “of King Henry our father. And for this they are to find “two ships to perfect the number of 20 ships of *Hastings*. “And to have all those privileges which the king’s father “had granted to them.”

When Richard was in captivity abroad, it appears that Canterbury 1192. the neighbourhood of *Canterbury* being in a state of disturbance, it had become necessary to protect the city with walls, ditches, and other defences:—as may be seen in a charter of Queen Eleanor, granted, in her son’s absence, to the prior and convent of *Canterbury*, and which stated,—that the men of the prior and *convent* had worked at the walls, not as of right or by custom, but at the instance of the queen; such work done of necessity, and from the intervention of the queen, should not affect the liberties, the prior and convent enjoyed under various grants;—a strong instance of the caution which the ecclesiastics then exercised to protect their privileges: and also a proof of their general exemption from these burdens.

The privileges of the citizens of London, of not pleading without their walls, and all other liberties enjoyed by them, were granted to the citizens of *Norwich* and their *heirs*; Norwich. that no stranger should dwell or take any thing by force within the city. They were to choose as a *reeve*, whom they would.

* Jekes’s Charters of the Cinque Ports.

Richard I. John, Earl of Moreton, granted also in this year to the
 1193. burgesses of *Lancaster*,* all the liberties which had been
 Lancaster. given to the city of *Bristol*, and exemption from all ser-
 vile customs; which charter was subsequently confirmed by
 King John and King Edward III.

1194. This king also conceded, in the 5th year of his reign, to the
 London. citizens of *London*, a charter, in substance the same as that
 which had been granted by Henry I. and Henry II., and
 resembling those we have previously seen of this king,
 to other boroughs. The *men* of London and the sheriff
 are mentioned;—the grant being to the citizens and their
heirs.

We have already observed, that neither of the charters of
 Henry I. nor Henry II., *incorporated* London. This of King
 Richard is in substance the same, and *does not* incorporate
 the citizens; but on the contrary, the grant is to them and
 their *heirs*.

1191. Prince John, Earl of Moreton, with the archbishops and
 the other justiciaries of the kingdom, at this time, during the
 absence of the king in the crusades, granted to the citizens
 of *London*, that they might have their “*communam* ;” and
 the prince, archbishop, bishops, earls, and barons, swore that
 they would maintain it.†

Commu-
nam.

This term has been much relied upon, particularly by
 Brady; and it has been supposed to import some corporation,
 or corporate right.

If the ground we have taken is correct, it is impossible it
 could do so: for no place at that time assumed any corporate
 rights or functions. Nor was it necessary; because the aggre-
 gate bodies in towns, were allowed to enjoy all privileges,
 by succession, without being incorporated:—and in the lan-
 guage of the charters of this, and succeeding reigns, *heredi-
 tarily* (*hereditariè*) to them and their heirs. It could not,
 therefore, have been the *object* of this charter, to have made
 London a corporation; neither had it that effect. For none

* Rot. Cart. 11 Ed. III. n. 39, by *Inspeximus*.

† Wilk. 343. Hovedon, 702.

of the subsequent documents we shall quote respecting Richard I. London, will show it to have claimed to be a corporation, or to have acted as such. On the contrary, they will negative that position. If this had been a grant of incorporation, it is singular, that it should never after be referred to for that purpose. That the term had no such meaning, appears also from its being frequently applied on occasions, when it could not have had a corporate signification; and to bodies who could not be incorporated: as for instance, in Magna Charta, the "*communa totius terræ*" is mentioned;—the "communa of the wapentake of Sandford;"—and the "*communa of the county of Buckingham.*"*

Magna
Charta.

That it had the same application in London, is evident, for in the 5th of Henry III., the mayor, in a document, speaks of the "*universalis communa*," and "*universitas vestra*;" and in the same year, there is a recognizance by the bailiffs, aldermen, et totius communitate Lundoniæ.†

In truth, the term is nothing more than the Norman appellation for that which was called in Latin *communitas*, and in English the "*commonalty*;" and the Norman tongue being continued long afterwards in this country, as the language of the court and the law, we find this and similar terms frequently used in subsequent periods. Thus, in the Constitutions of Colchester, in the time of Richard II., the "*communers*" are spoken of, instead of the commonalty.

Commo-
nalty.

The real meaning of the word is obvious—William the Conqueror had granted to the citizens of London peculiar privileges, which they were to enjoy as a body, distinct from the surrounding counties; which privileges were confirmed and enlarged by succeeding kings—this was a confirmation of them, to the separate body of the citizens, under this term of "*communa.*"

The king further granted, in the same year, to the citizens of London, that all weirs in the Thames should be removed: on account of the great injury they did to the city, and the whole realm.

* Mag. Rot. 6 John, Rot. 1, m. 1. Ib. Rot. 2, m. 1. † Rot. 6 a. Rot. 14 a.

Richard I. To which charter, it is not necessary further to direct obser-
 1197. vation, except to remark, that it has been assumed by some, that it gave to the city of London the conservancy of the river Thames;—rather a bold assertion, as the charter gives no power, but only restricts the erection of weirs, and the interference of the keepers of the tower of London; the provisions being in substance the same as Magna Charta, 9 Henry III., cap. 33, which extends also to the river Medway.

1194.
 Ports-
 mouth.

This king also granted at the same period, a charter to the burgesses of *Portsmouth*, reciting,* that he had retained it in his own hands; he then grants a market and fair, and directs, that the *burgesses holding in it and of it*, should be free of toll, and of *shires and hundreds*, and suits of shires and hundreds; and to hold their mansions as the citizens of *Winchester* and *Oxford*.

1201.
 2 John.

King John afterwards granted in substance the same as Richard I., and directs generally, that the burgesses should have the same privileges as those of *Winchester* and *Oxford*.

1230.

Henry III., on November 17th, in the 14th year of his reign, also granted Portsmouth, in fee-farm, to the men of Portsmouth, and their *heirs*.

And the next day, the 18th of November, he granted another charter, similar to that of Richard I., except that in consequence of the charter the day before, it omits the recital, that the king retained Portsmouth in his own hands.

From these grants it is obvious, that the rights and privileges of the burgesses of Portsmouth, continued the same from the 5th of Richard I. to the 14th of Henry III., being a period of 36 years; and that the class of persons, who were the burgesses, were the same during all that time.

These charters, unlike many of the early documents, are not altogether silent as to who were the burgesses—for they are described, as "*holding in it and of it*." Those holding in it, must certainly be assumed as being *householders*; and

* Cart. 5, Rich. 1, No. 5. Brady, Appendix, 20.

those holding of it, to be resident, either in or near Portsmouth: for it cannot be conceived, that a general exemption from toll all over England, would be granted to persons not residing within the borough. With respect to the exemption from shires and hundreds, it is certain that such a privilege could *only* be granted to those *resident upon the spot*; because it was in respect of *resiancy*, that suit at shires and hundreds was due—and the king could not grant total exemption from that suit—it must have been done somewhere: the fair inference therefore is, that these persons, who were to be exempted from doing suit at the sheriff's tourn, were so in consequence of their residence within the borough—by virtue of which, they were bound to do this suit at the borough leet. This appears even more distinctly from the close of the charter, where the mansions of the burgesses are spoken of—a term usually applied to the houses of *permanent* residents.

Richard I.

We may therefore rely with confidence upon the inference to be drawn from these charters, that the burgesses of Portsmouth were originally, and within the time of legal memory, the *inhabitant householders* of the place;—that they clearly so continued till the 14th of Henry III. has been already shown: and a confirmation to the burgesses, in the 39th year of the same reign, of the liberties they had heretofore used, carries it down to that period.

1255.
39 Hen. III.

We shall hereafter show when the first change took place, by its being incorporated: and its subsequent submission to the violent acts following the statute for the purging of corporations, passed on the restoration of Charles II.

Richard I. also granted to the *burgesses of Doncaster*, their soke, within their town, at the ancient rent.*

1194.
Doncaster.

He likewise confirmed the charters which the Archbishop of York and Henry II. had granted to the *burgesses of Beverley*; and as those were not charters of incorporation, and were confirmed within time of legal memory—and again by King John—it is also clear, that the burgesses of Beverley

Beverley.

* Enrolled in the Exchequer, 5th Henry IV. M. T.

Richard I. were unincorporated within the time of legal memory, and therefore cannot prescribe to be a corporation.

Gloucester. The king granted the borough of *Gloucester* to the burgesses, at the rent of 55*l.*, and 10*l.* increase.

1195.
Ipswich. In the 6th year, the *men of Ipswich* rendered an account of 60 marks, for having the town in their own hands, and for a confirmation of their privileges.*

Hereford. The *men of Hereford* the same.

York. This king also made a grant to the *citizens of York*, to be quit of toll—and that they might take distresses for their debts—and defend themselves, by the oaths of 36 *men* of the city.

It seems impossible to conceive, that these 36 *men* were not to be *inhabitants* of the borough. Indeed, from a charter of the 46th of Henry III., the inhabitants of York are exempted from juries, upon the general principle, that they served upon them within their own limits.

In the heads of the pleas of the crown which were collected in this reign,† there is a direction, that all the cities—boroughs—and demesnes of the king—should be talliaged. This seems to be a decisive authority to show, that the demesnes of the king were separate and distinct from the cities and boroughs. But it is probable, that some of the privileges enjoyed by tenants in ancient demesne, were granted by the crown to the boroughs: and from their situation being, in some respects, analogous, as in that above mentioned, of their being both talliaged—the common, though erroneous opinion has arisen, that boroughs were the ancient demesne of the crown; and that, therefore, the rights of burgess-ship depended upon tenure. The numerous quotations we have made from Domesday, must have removed that error,—this document has the same tendency.

Tenure.

In the enumeration of the heads of the pleas of the crown, the *hue and cry*, and proceedings against outlaws, robbers, and their receivers are mentioned. The provisions for taking the oath of allegiance and obedience to the

* Mag. Rot. 6th Richard I. 1 Rot. 4, m. 2 b.

† Wilk.

laws, and doing that suit at the court leet, were also continued in full force. Richard I.

In the 9th year of Richard I., there was a general provision, that there should be one weight and measure throughout the kingdom ; and that it should be adopted as well within *cities* and *boroughs*, as without. That no dyed cloth, except black, should be sold, but in *cities* and *capital boroughs*. 1197.

It was also provided, that in every *city* and *borough*, four, or six, *lawful men* of the town, according to its size, (adopting the most general description, and using the language of the common law—but not describing them as the members of any guild, or select body,) should, together with the *sheriff* or *reeve* of the city or borough, if they were not in the hand of the sheriff, be assigned to keep the assise of weights and measures.

The *lawful men*, (*legales homines*,) being required within cities and boroughs, to attend to the weights and measures (a duty to this moment performed by juries composed of the *inhabitants* of the place)—is strikingly confirmatory of the doctrine before asserted, that *the free inhabitants of the borough, sworn to the law in the court leet*, were, under the character of "*legales homines*," *the burgesses of the boroughs*. The provision also, that this was to be done by the *reeve*, if they were not in the hands of the sheriff, is also confirmatory of the position, that *separation from the jurisdiction of the sheriff, was the real basis of the borough rights*. And when, on any account, that separation ceased, and the borough had (as ought to have been the case *in the instance of Old Sarum*) reverted into the hands of the sheriff, then the reeve was no longer to interpose ; but the sheriff, as the king's officer, was to superintend the due execution of these duties. Old Sarum.

In the directions also for the collection of the talliage in this year, the acts necessary to be performed, were to be regulated by the bailiffs of the hundred, and the sheriff of the county :— which again establishes the different mode of 1198.

Richard I. executing duties of this description in the counties at large and the more limited districts of the boroughs.

Ireland. As we have thus seen that the charters and confirmations in *England*, subsequent to the time of legal memory, continued, confirmed, and granted the same privileges which were enjoyed before that period; and that none of them amounted to charters of incorporation: so the same fact exists with respect to the cities and boroughs of *Ireland*—as we shall see in subsequent confirmations.

Dublin. John, Earl of Moreton, whilst Lord of Ireland, granted and confirmed, in this reign, to the city of *Dublin*, all the liberties and privileges which were given by his father and predecessors.*

Conclusion This reign, therefore, which has brought us within the limit of legal prescription, affords, with respect both to England and Ireland, in effect, the same inferences before extracted from documents and records of the previous periods of our history.

There are *no charters of incorporation*—on the contrary, they are all granted to the burgesses and their *heirs*: and the general inference, that the burgesses were the *inhabitants, presented—sworn—and enrolled at the court leet, paying scot and lot*, is supported by every document—charter—and legal provision which can now be traced—either in the general history of the country, or the local muniments of particular boroughs.

* Harl. MS. vol. i.

JOHN.

We have now advanced to the important reign of King John, in which charters to the principal cities and boroughs were granted to an unprecedented extent. From this period commences the great roll of the charters, and we have therefore the means of tracing them in their regular succession. 1199
to
1216.

All from the first year of this reign, to the end of that of Edward IV. are included in the "Calendarium Rotulorum Chartarum," edited by the Commissioners of Public Records in 1803.

The Charter Rolls contain an immense collection of grants, liberties and privileges, as well to ecclesiastical as to lay bodies; and also relative to places as well in England as in the possessions of the English crown in France. Likewise grants to individuals of lands—protections and franchises—and of liberties and privileges to larger bodies of the people. ll

On the charter rolls there are none of the 3d or 4th years of this reign, probably owing to the absence of the king in France;—nor any of the 8th—9th—11th—12th or 13th. In the 10th year there were only two grants affecting our present researches—one to Kingston, the other to Haliwerefoc in Durham; the remaining 25 were private grants to individuals of markets, fairs, free warren, &c. Whether the absence of all charters during the above years is to be attributed to the interdict of Pope Innocent III., under which the king and the nation then lay—the actual excommunication of the king—the absolution of the oaths of fidelity and allegiance to him—with the threat of excommunication of every one who had any intercourse with him in public or in private, requires further investigation. The fact of there being no charters granted during those periods, is alone here material. ll

In the 14th, 15th, 16th and 17th years, many other charters

* Vide Cal. Rot. Car.

John. were obtained from the crown. But in the 18th, the last of the reign, none were granted to any cities, boroughs or towns.

Altogether, 77 charters to cities and boroughs appear during nine years of the eventful reign of King John.

Of those found amongst the *Cartæ Antiquæ*, and those on the Charter Rolls, some are granted to the *citizens*—others to the *burgesses*—many to the *men*—the *honest and the free men*—the *free and lawful men*—and to the *good men* of the boroughs; and those to the Cinque Ports are granted to the barons.

The important question is,—whether one and the same class of persons were not intended by these several appellatives, or different and distinct bodies in the several towns. On the one hand it is said, that the grantees of these charters were the *inhabitants*, with certain exceptions; on the other it is contended, that they were select portions only of the population.

Inhabitants.

The exceptions to the former class are, the ecclesiastics—the *servi* or bond people—the poor not paying scot and lot, and new comers, not sworn, admitted or enrolled—lodgers—minors—persons of incompetent mind—and females; so that the general word "*inhabitants*," though used for convenience and brevity, is subject to these material exceptions, and was confined originally to the *free*; but as all are now free, that distinction is removed, and it ought to apply to all male inhabitant householders paying scot and lot, as contradistinguished from a selected portion of persons, whether inhabiting the place or elsewhere, who had been admitted (often *ex gratiâ*) into an exclusive corporation. Villainage having ceased, all persons are now of free condition:—the original qualification, therefore, of freedom, being no longer necessary as a peculiar ground of admission, should have ended with villainage; and the "*inhabitants*," ought properly to have been relieved from this restriction.

The names applied to the grantees of these charters, have been frequently insisted upon as terms so general, that they would not admit of a partial appli-

cation to any select body of the inhabitants; but such arguments have generally been applied with reference only to the circumstances of some particular place; and, in that abstracted point of view, have been deemed less conclusive than they will be found when the charters are considered synthetically.

John.

This king (amongst others) made grants to the *citizens of London—Lincoln—Norwich—York—Winchester—Hereford—Exeter, &c.*; and it is reasonable to infer, that by that term he intended one and the same class of persons in each of those places; yet, in the sequel of our inquiry, it will be found that *different classes have been, both for municipal and parliamentary purposes, considered as the citizens of those places*; by which means the charters have in some cases had a general, and in others a partial application attributed to them, though they justify no such distinction, but would lead to the conclusion, *that they were all intended to be similar*. Thus the citizens of *Lincoln* were *freemen*, elected whether resident or not. At *Norwich*, the *freeholders* resident and non-resident; and such freemen only as were entered in the corporation books were the *citizens*. At *York* the citizens were confined solely to the members of the corporation, who were called *freemen*, and were admitted by birth, servitude, purchase or gift, whether resident or not. *Exeter* again included the *freeholders* and the freemen, whether resident or not. And the citizens of *Hereford* were only the freemen of the corporation. Nevertheless, in each of these places, the grantees of the crown are described by the name of "*Citizens*."

Citizens.

When we accurately examine the privileges granted, we shall be satisfied that they could not be restrained to the freeholders alone; nor could that class have any peculiar title to them.

On the other hand, they could not extend to persons *non-resident* within the cities or boroughs; because, when once a residence without the bounds is admitted, there is no limit to the number who might be received into the corporation.

John. It will also appear, that the privileges would be incompatible with such an unlimited power. Thus, for instance,

the grant of freedom from toll throughout the kingdom, is an exemption usually contained in those charters. If the enjoyment of it is limited to the inhabitant householders within the borough paying scot and lot, there is a reasonable ground for it:—because, contributing to the public exigencies in one place, they should be freed from such charges in others; the inhabitants of which would in the same manner pay their own burdens, and have the reciprocal benefit of being discharged in other places: but if resident and non-resident persons could be indiscriminately admitted as freemen, and as such be entitled to exemption from toll, it is obvious that the reasonable ground and consideration for it would no longer exist—the reciprocity is defeated—and any one place might exercise the power of admitting non-resident freemen to such an extent as to destroy the right to toll in all other places, and materially interfere with the dues of the crown—a proposition so absurd that it gives its own refutation, and requires only to be mentioned to insure its abandonment. We may therefore assume, that non-residents could not have been included in such an exemption.

So likewise all grants of exclusive jurisdiction, must from their very nature be confined to the inhabitants; and could not extend to non-residents: otherwise, by their general admission as freemen, the king's jurisdiction might be excluded over an unlimited number of his subjects. We may generally observe, that *all the privileges and liberties granted in the charters we shall hereafter quote, were of a local character.*

The reader will also perceive that *none* of these charters are grants of *incorporation*. It is true that many of them give the boroughs, and other lands, at fee-farm rent. And we have already shown that such a circumstance did not create a corporation by implication. Because such grants were made *to men of the counties,** and *the men* and

* 1 Petit. 23. In. Temp. Lib. Rot. Oblat. m. 12. n. 3.—Men of Lancashire, for a certain person to be their sheriff.

tenants of manors,* to the men of wapentakes, and their heirs, to be free of forestage ; and other similar grants.

John.

The *creation of guilds* is also to be found in these charters.

We have already in some degree explained the term,—their origin—and nature.

The charters will show that they were distinct from the boroughs, and the burgesses : at least, they included only a portion of that class. Brady, therefore, is altogether unfounded in his assumption, that these mercatorial guilds were the foundation or principal characteristic of the boroughs, and that the tradesmen belonging to them were the free burgesses. On the contrary, it will be seen, that they were generally created subsequently to the existence of the borough—that they were altogether separate and collateral—that they might, or might not, exist in it ; and that they were distinct from the municipal government and police : which was the great and political object of the institution of separate municipal jurisdictions.

Mercatorial
Guilds.

Brady also entertained the notion,† that grants of fairs and markets formed another essential characteristic of a borough. But innumerable instances might be quoted, if it were desirable, of grants to manors and inferior places, and even to individuals ; when there was no pretence, that those places were ever boroughs, or the individuals to whom the privileges were granted, burgesses, or members of corporations.

Fairs and
Markets.

To mention two or three instances of this description, without needlessly accumulating them, there is an early grant to Gulfrid, the son of Peter, of a fair and market in his manor of Kenebruton. Another to Fulco de Oyri, of a market and fair, at Gedenay ;—to Peter, the son of William de Dapifer, a market at Birmingham ;—and in the 1st of John, there is a grant to the templars of a house and fair at Bristol.‡

Extracts from some of the charters, and particularly those which differ from, or illustrate each other, will be given, with comments upon them, for the purpose of marking more dis-

* Cart. Rot. Tur.

† P. 33.

‡ Aylf. Cart. Ant. 4, 14, 18, 24.

John. tinctly their general objects, and their particular application to the present subject of inquiry; and with a view of establishing our position, that although the charters varied much in their words, they were in their substance, meaning, and object, the same. Thus it will be seen, that the charter of *Helstone* grants, that the borough should be free.

That of *Wells*, that it should be a free borough, and the men free burgesses.

But it is impossible not to infer, that in all these instances, the same object was in view, although the terms or the frame of the charter, might slightly differ.

It will be readily seen, that few of these charters are for the purpose of creating boroughs. The generality of them speak of the burgesses, as a class of persons existing in the place to which they were given at the time of the grant. None of them, nor those of many succeeding reigns, profess, in any degree, to provide for any election, nomination, or admission of burgesses; but leave that important part of their constitution to the provisions and regulations of the common law; the grants being simply to the burgesses, of whatever class they might be. This is the only ground upon which the omission, otherwise most extraordinary, can be explained.

It should be observed, that of the charters we shall cite, Brady has quoted some in his *History of Boroughs*, for the purpose of establishing his hypothesis, that they originated in trade; but he was, at the time of his compiling his book, keeper of the records in the Tower; and if the supposed date of the index of the charter rolls is accurate, it must have been there at the time Brady wrote. The reader, therefore, will judge of the candour of that author, and the reliance to be placed upon him, who knowing of all these other charters, made only a partial selection of a few, and omitted the great majority—giving to those he quoted, a construction which cannot be supported, when they are compared with the others.

1199.
London.

This king granted five charters to the citizens of London,*

* Obl. Rol., n. 20, n. 20. 1 Pet. MS. Inner Temple.

for which they paid 3000 marks. The first gave to them the privilege, like those of Henry II. and Richard I., of not pleading without the walls, —quittance of murder, battle, forced lodging, toll, and lestage—and recognized the extension of the franchise over Portsoken, the holding of the hustings, excusing miskenning,—and in fact confirming the liberties which had been granted by Henry II. and Richard I., to the citizens and their *heirs* hereditarily.

John.

It is therefore clear, that whatever previous grants had been made to London, there had *been none of incorporation*—their privileges continued the same, as in the former reigns to which we have alluded; and that the substance of them was an exclusive jurisdiction, and liability only to charges within their own limits. We shall hereafter see that a similar grant was made to York, another of the cities, which at that time held a distinguished place in the country; and with reference to which, the observations above will equally apply.

York.

The citizens of London obtained upon the same day, a charter from King John, relative to the weirs upon the Thames and Medway, precisely similar to that of Richard I.

Weirs.

In the same year, this king granted a third charter to the citizens of London, confirming to them the *sheriffwick of London and Middlesex*, with all customs and things belonging to it, to hold to them and their *heirs*, paying £300 per annum, saving all their liberties and free customs. And that they might amongst themselves make sheriffs whom they would,—and remove them whenever they thought fit.—The citizens being liable to answer for the amercements and firm if the sheriff did not. And that for offences they should be adjudged according to the law of the city.

The fourth charter by this king to London, recites, that at the request of the mayor and citizens, he had granted that the guild of weavers should not from thenceforth be in the city, nor be maintained there; but because the king had been accustomed to receive from that guild 18 marks per annum, the citizens were directed by the charter to pay to the king 20 marks, for a gift at Michaelmas.

Weavers.

John.

The last charter made no essential alteration in the constitution of London; but was a mere confirmation of the she-riffwick, and therefore left the city in the same state as it existed before, with respect to its municipal government. The same observation applies to this charter.

Mayor.

It is true, that it is stated to be made on the petition of the "*Mayor and Citizens*;" a term which we have not before found in the charters as applied to the presiding officer in London, who, in the reign of William I.,* was called the *reeve*; and although the mayor of London is named in a writ in the reign of Henry II., yet he does not appear to be mentioned in any of the subsequent grants, which are merely to the citizens. As we have charters in the reign of William II., Henry I., Henry II., Richard I., and three preceding charters by King John (two in one day), in none of which the mayor is mentioned, it is not assuming too much to say, that there was no charter authorizing the change of the name from reeve to mayor:—and notwithstanding the great importance which has been attributed to the latter term by authors—lawyers—and even the courts of law—and parliament, there seems to have been no necessity for a charter to change the name—for the *office continued the same*; and it is obvious that the alteration of the term could make no essential difference. For, as we have before observed, the name varied only according to the different languages from which it was borrowed:—reeve being the Saxon term—bailiff the French—*præpositus* the Latin, afterwards translated into provost—and maire the Norman appellation, probably borrowed from the Latin term *maior*, not altogether without analogy to the Saxon term for another officer, the elder or ealdorman—the modern alderman: but to suppose, that any real distinction was intended by the use of these different terms, or that there was such magic in the appellation of mayor as to import a corporation, or any connection with it, seems too childish to require refutation, or even to justify further comment.

From the context of this charter it is clear, that the "Guild

* See Proem. 2d. Inst. p. 6.

of Weavers" was separate and distinct from the body of the citizens at large; and that the mayor and citizens had no control over them; otherwise they would not have petitioned for this charter to suppress that body: because, if they were dependent upon the mayor and citizens, they could have put an end to the guild without applying to the king. It is equally plain, that the municipal rights of the citizens did not, in any degree, rest upon this guild; for had it been so, those rights would have been diminished by its destruction, for which the citizens were to pay 20 marks per annum.

John.

This instance therefore would suffice, without others, to satisfy us, as a point upon which we may rest with certainty—that these guilds *were not connected with the citizenship of London*: and if not so in this city, which was the great mart and emporium of trade for the whole country, is there even a semblance of probability, that it was so in any other place in which trade would, comparatively speaking, be of less importance?

This king also granted, in the 16th year of his reign, another charter;* not as before, to the citizens of London, but to the *barons of that city*; that they might choose from themselves every year a *mayor*; who was to be sworn, and whom they might remove at the end of the year, and substitute another in his place. The charter also confirmed to them the liberties and privileges of the city, saving only to the king the chamberlainship.

1214.)

Here we have another instance of a change in the use of a term, without any substantial alteration in the thing described.

We have already shown, that all the municipal rights and liberties were in substance granted to the *burgesses*, which is the general term for those who enjoy privileges distinct and separate from the sheriff:—but in cities, that same class of persons were called *citizens*, there being no essential distinction between them and burgesses. So also, in some places where extensive possessions were enjoyed by the

Citizens.

* Rot. Cart. 16 Joh. m. 1, pars 2.

John. grantees, they are called "barons," a term denoting extensive landed possessions amounting to a barony. Thus we find in the latter part of the charter of Henry I. to London, granting the county of Middlesex, the term "barons" is used—and the same appellation was given from very early time, to the "barons of the Cinque Ports," who rendering considerable services to the king, had large landed possessions, to enable them to perform those duties.

That the term of barons made no essential distinction in the class of the citizens, is clear from this circumstance, that we shall find in the next reign of Henry III., a grant again made to the "*citizens*;" and on the same day, there is another to the barons; and in the 37th year of the reign of Henry III., there is a recognition of the right of the citizens to elect a mayor, which is the privilege granted to the *barons* by this charter of John. In the 52nd year of Henry III., there is another grant to the *citizens*.

Mayor. Express power is here given to choose a mayor, but the object of the charter does not appear to be to authorize the city to have such an officer, for they had one before,—but it was to enable them to choose that officer, whom the king had previously appointed, and to make the election annually. This charter, therefore, in substance effecting no more than this—leaves the citizens in precisely the same situation as they were before, both with respect to their class and privileges.

Oxford. 1199. The burgesses of Oxford gave to the king 200 marks, for a confirmation of the liberties which they had in the time of King Edward, the father of this king. And that they might have the borough at fee-farm, with the same liberties as the city of London.

Lincoln. *Lincoln*:*—the one in effect, the same as the first to the citizens of London; which carries back the franchises of Lincoln, to the period of Henry II., the date of the grant to London. As we have already observed upon the charters and liberties of that place, it is not necessary here to say more

* Rot. Cart. 1 Joh. m. 30; et ib. 1 Joh. m. 3, pars 2.

than that the grant to Lincoln, in substance, gives “*an exclusive jurisdiction* ;” one privilege being that of not pleading without the city, nor being obliged to wage battle, but to try the matter according to the laws and liberties of the city of London.* The second charter, in the same year, is a confirmation of the former ; with the addition, that the city might, *by the common council*, elect two of the most lawful and discreet citizens, who should keep the *reeveship* of the city ; and should not be removed, so long as they conducted themselves well in their bailiwick, unless by *the common council* of the city. And that the citizens might, by the common council, elect four of the most lawful and discreet, to keep the pleas of the crown, &c.

John.

Common
Council.

This clause, in effect, gives to the citizens of Lincoln, the power of electing two persons, described in the language of the common law, *as lawful men*, who were to fill the office of *reeve*, bailiff, provost, or mayor ; and was, in substance, the same as that granted to London, authorizing them to choose their mayor. But these persons are directed to be chosen by the “common council”—a term which has been so frequently applied, to support and justify the acts of select bodies in corporations, that it becomes important here to consider it.

The first observation which occurs is—that at this time, there was not, neither *in Lincoln, nor in any other place in the country, a municipal corporation*. This charter does not create one. The term “common council,” therefore, as here used, *cannot* mean a select body of a corporation ; on the contrary, its signification can be clearly established, by other documents of this period. There are numerous instances, in which this term, as we have noted in our progress, was applied to the deliberation or consent of any body of men :—as the king did acts by the *common council* of the archbishops, prelates, and barons.† The *common council* of the clergy—the laity—the county—the hundreds—and towns—are all indiscriminately mentioned. There is, therefore, the plainest practical application of this term ; which these documents support,

* MS. In. Temp. Lib.

† Mag. Char. et patentes Regis de Moneta. Wilk. 360.

John. instead of applying it to a state of things, which did not exist at the time when it was first used; an explanation which, if adopted, would have prevented the bewildering intricacies, in which the name has been since involved, by its modern application to corporate bodies.

The mayor of London was to be elected by the citizens. The *reeves* of Lincoln in the same manner. But, adopting language which had been frequently used before, to describe the *common assent* of those who did the deliberative act of election, they are directed to make it by the *common council* or assent of the citizens.

These terms run through the whole of this part of the charter, as they reasonably might; and the four *lawful persons*, who were to be appointed to hold the pleas of the crown, were to be elected in the same manner—affording an instance, of which we shall show many hereafter, of new terms introduced into charters, where, the object was still the same; though a phrase omitted in one charter, might be inserted in another.

The four lawful men here appointed to administer the pleas of the crown, were, no doubt, a reduced number of the 12 *lage-men* of Lincoln, mentioned in Domesday.

Shrewsbury.

Shrewsbury had granted to it, in the same year, a charter precisely the same as that to Lincoln;* it therefore requires no further observation.

All the liberties of *Shrewsbury* were confirmed in the sixth year of this reign.

Whitby.

A charter was also granted to the burgesses of *Whitby*, confirming all the liberties given by the abbot and church†—viz. that they might hold *Whitby* in free burgage; and might have free laws, and free acquittances, in all things to the church of *Whitby*, and the abbots and monks belonging.

Whitby was not a borough in the time of the Domesday survey; but belonged, with other large territories, to William de Percy, brother of Scoto, Abbot of *Whitby*. It was made a borough by the abbot, and confirmed by King John. But, as it never returned members to Parliament, the probability is, it ceased to be so before the 23rd of Edward I.

* Rot. Cart. 1 Joh. m. 13.

† Rot. Cart. 1 Joh. m. 19.

And is an instance of a borough losing its exclusive privileges, and being re-absorbed into the county, in the manner to which we have before referred. John.

A charter was also granted to the citizens of *Norwich*,* Norwich. precisely resembling that of London—to the laws and liberties of which place, as well as those of Norwich, a reference is made in the charter. The *hustings* were to be held once in a week, as those in London;—and the *reeve* of Norwich is mentioned, corresponding with the same officer in London in the time of Henry II. These privileges the citizens and their *heirs* were to enjoy *hereditarily*. The fee-farm of 108*l.* being paid by the *reeve*. And it was provided, that the citizens might make the *reeves out of themselves*, yearly—whom they might think proper, for the king and themselves.

The charter to *Preston*,† Preston. grants to the burgesses all the liberties and free customs which Henry II. gave them—with a fair,—pasture of the Forest of Fulwood; and wood out of the forest, to build their houses. It must be remembered, that the *inhabitants* of Preston were decided to be the *burgesses*; although a charter of incorporation, in the usual form, was granted to them long subsequent to this period. And that there is no particular magic or effect in the word “free burgess,” appears from this, that there is a grant in the same year to one Gosnell Fitz Gosnell, who is described as a *free burgess* of Preston, meaning as appears above, that he was an inhabitant.

In the successive charters to London, of Henry II.,‡ Gloucester. Richard I., and King John, we have seen the same privileges repeatedly granted; and we shall have frequent occasion to observe, that successive kings merely gave the privileges before enjoyed—thus, *Gloucester* appears in Domesday to have been a borough in the reign of William the Conqueror. The charter of this date refers to the ancient fee-farm; and yet it grants to the burgesses the whole borough, at the accustomed fee-farm, and 10*l.* of increase. It then proceeds to give to the burgesses of the guild-merchant

* Rot. Cart. 1 Joh. m. 11.

† Rot. Cart. 1 Joh. m. 4.

‡ Rot. Cart. 1 Joh. p. 2, m. 2.

John.

the franchise—that none of them should plead without the walls, except the moneyers and ministers—with exemption from duel, toll, &c., and lestage. The liberties of London were also granted. Their ancient laws were referred to, and confirmed:—as well as the possession of their lands. And if any one took toll from the *men* of Gloucester, of the guild of merchants, the sheriff of Gloucestershire, or the *reeve* of Gloucester, was to take pledge thereof.

These privileges were declared to be granted for the emendation of the city. Exemptions—and safety for foreigners, and others, who “*come*” with their merchandise to Gloucester occur—and all these privileges—the burgesses and their *heirs* were to enjoy *hereditarily*.

The burgesses of Gloucester, *by the common council* of their borough, were also to elect two *lawful men* to keep the *reeveship* of the borough; and four others to keep the pleas, as in Lincoln—Shrewsbury—and other places.

It seems clear, therefore, that this grant was intended to give to Gloucester in substance the same privileges as had been conceded to other places, though there is this variety in the charter, that it grants some of the privileges (such as the freedom from toll) expressly to the *burgesses of the guild-merchant*; whilst the other liberties are to the burgesses generally. The reason of this is obvious:—the freedom from toll was useful only to those of the merchant guild; whilst the other liberties applied generally to all the burgesses. It is also decisive to show, that those of the guild-merchant were not all the burgesses; and that the fact of their belonging to that body no more affected their burgeship than as if they had belonged to any other class—as freeholders—squires, &c.

York.

This king also granted,—as appears by *inspeximus* in a charter of the 36th of Henry III.,—the town of *York*, with its appurtenances and liberties, at farm, to hold to the burgesses and *their heirs*, for 160*l.* annually.

And by another charter granted to the citizens, all their liberties, laws—customs,—mercatorial guilds and hanses, and their free lestages, as they held the same in the

time of Henry I. and II. ; and by the charters of Henry II. and Richard I., freedom from tolls and customs.*

John.

A similar charter was granted to *Scarborough*, giving them the same liberties as the city of York, and requiring that every house whose gable was turned towards the highway, † should render to the king yearly, 4*d.*; and those whose sides were turned towards the highway, 6*d.*; and those privileges were also granted to the burgesses of Scarborough and their *heirs*.

Scarbo-
rough.

The reader will remember how frequently the gable rent occurred among the entries in Domesday.

In the same year the town of Scarborough, with the town of Wells Grove, was granted in fee-farm to the *men* of Scarborough.

Chewke

We have seen the charters of *Beverley*, before mentioned, ‡ in the reigns of William I., Henry I., Henry II., and Richard I.

Beverley.

Another charter was granted in the first year of this reign to the *men of Beverley*, that they should be free of toll, pontage, &c. saving the liberties of the city of London. And there is a confirmation to the *burgesses* of all the liberties granted by the archbishops of York, and confirmed by the charters of King Henry I. and II., and King Richard.

In the fifth year of this reign, King John granted to all the *men settled* throughout Holderness, privileges respecting the holding of their lands of the church of Beverley as they were wont to do before.

The king also immediately upon his ascending the throne, for he succeeded to the crown on the 5th of April, and on the 25th of the next month he granted to the *burgesses* of *Ipswich*, the borough, which we have seen existed at the time of the survey of Domesday, with all its appurtenances, liberties and free customs, to be holden by them and their *heirs hereditarily*, at the accustomed fee-farms, &c.; 100*s.* over and above what they used to pay, to be rendered by the hand of the *reeve* or provost. It was also granted that

Ipswich.

* Rot. Cart. 1 Joh. pars 2, m. 20.

† Rot. Cart. 1 Joh. pars 2, m. 21.

‡ Rot. Cart. 1 Joh. pars 2, m. 5.

John. the burgesses should be quit of toll, &c.—that they should not plead out of the borough—that they should have a merchant guild—that nobody should take forced lodgings within the borough—that they should hold their lands—pledges and dues;—and as to their tenures, that right should be done them according to the customs of the *borough of Ipswich, and of the king's free boroughs*, to which reference is twice made. The burgesses of Ipswich were to hold all their liberties and free customs, as the other free burgesses of the free boroughs of England, saving the liberties and free customs of the citizens of London. The provisions in the charters of Lincoln, Norwich, and other places, that there should be two lawful persons elected *by the common council* of the town for the *reeveship* of the borough, and four *lawful men* to keep the pleas of the crown,—were repeated with respect to Ipswich.*

Freedom from toll was enjoyed even in late times in all ports of the kingdom by those masters of ships who were free of the borough, decisively proving, as we have observed before, that the power of making freemen could not be unlimited; for if it were, the burgesses of any borough might defeat the rights of other places to toll, and of the king to his dues; by making all who desired it, free of their borough:—and therefore it is clear, that this exemption could not have been intended to be communicated to any but the actual *inhabitants*.

The same observation may be applied to the exemption from pleading without the walls:—for otherwise the king's jurisdiction might be excluded over an unlimited number of his subjects.

As Ipswich was a borough at the time of Domesday, it is certain that this grant of a merchant guild could not, as "Brady" supposes, have made it a borough. And it appears clearly from the directions in the charter, that as the burgesses of Ipswich, were to enjoy the same privileges as other free boroughs, it was assumed that all their privileges were

* Car. Ant. E. E. m. 31.

† Car. Rot. 2 Joh. pars 1, m. 34.

alike. The same provision also occurs in the charter of Huntingdon, in the seventh year of this reign. John.

In consequence of the ancient documents relative to this borough, having been carefully preserved, we are enabled to learn precisely and practically what was done upon the granting of this charter; for there was a transcript preserved of a roll, made in Ipswich, about 13 months after this date, describing the state and government of the town. Perhaps the short interval before this document was made, occurred from the fine due upon the granting of the charter not being paid till some time after; a circumstance by no means unusual at that period, as may be seen by the oblata roll.

It is thus entered:—The *whole town* being assembled in the burial ground of St. Mary, to elect two bailiffs, and four coroners, according to the charter then lately granted by King John—It was ordained, that there should be 12 *capital portmen, sworn in manner as they are in other free boroughs in England.*—That they should have full power for themselves, and the whole town, to govern and maintain the borough, and all the liberties of the same;—to render judgment of the town;—to ordain, and do all things in the borough, which ought to be done for its state and peace. *The whole town to assemble* in the burial ground, after the feast of St. Peter and Paul, next coming, *to elect the said 12 capital portmen.*

Twelve
Capital
Portmen.

On which Sunday, *the whole town* accordingly met before the bailiffs and *commoners*, to elect the said 12 capital portmen, and the bailiffs and coroners by the *assent of the town*, elected four *good and lawful men*, of every parish of the town, who were sworn to elect 12 capital portmen, of the most discreet and worthy of the town, to ordain for its state. And 12 persons were elected accordingly, and sworn *before the whole town*, well and faithfully to keep and govern the borough, and to maintain the liberties, granted by the charters of the king, and all other liberties, and free customs, *and justly to render the judgments of the courts*, without having respect to any manner of persons, and to ordain, and do all other things, which were needful for the state and peace

John. of the town, and justly and lawfully to treat as well the poor as the rich.

As soon as they were sworn, they caused the *whole of the towns-folk* to stretch their hands towards the book, and with one voice, solemnly to swear, that henceforth they will be obedient, intending, consulting, and aiding to their bailiffs, coroners, and the capital portmen, with their persons and chattels, to preserve and maintain the town, and the *new charter*, and the honour, and all the liberties, and free customs of the town, in all places, against all persons whomsoever, serving nevertheless to the lord the king, and his royal prerogative, as they ought to do.

The new charter was delivered to two *good and lawful men* of the town, to safely keep:—who were sworn faithfully to do so, and deliver it to the township, whenever it should be necessary, and when it should be wanted and required so to do on behalf of the town. Another meeting was appointed for the Thursday of the feast of the translation of St. Thomas the Martyr, next ensuing, of the *bailiffs, coroners and capital portmen*, to ordain what should be meet for the state and honour of the town.

They accordingly assembled, and ordained:—

That the customs should be collected by the bailiffs, and good men of the borough, who should yearly pay into the king's exchequer, the right and accustomed farm of the town.

That there should be two beadles to execute attachments, &c., and precepts:—and that one of them should keep all prisoners.

Seal.

That by the *common council* of the town, there should be made one common seal in the borough, to serve in weighty businesses, touching the *commonalty*, and to sign letters thereupon, for testifying the truth of all and singular the *burgesses* of the borough, and to do all other things which ought to be done for the common peace and utility of the town. The seal to be kept by three or four *good and lawful men* of the borough, thereunto sworn before the commonalty. That there should be elected by the *common council* of the town, one good, lawful, and fit man, who should be *alderman of the guild-merchant* “in”

Alderman
of the
Guild.

the borough, and that four good and lawful men, should be associated with him; and that the alderman and such four, should be sworn well and faithfully to maintain the aforesaid guild, and all things which to the guild pertained.

John.

That the new charter should be sent into the full county court of Suffolk, and into the full county court of Norfolk, and should be openly read in the same county courts, in order that the liberties of the said charter might be known and observed.

On the same day, it was granted by all the *commonalty*, at the *request of the 12 capital portmen*, that for the labour which they should bestow on behalf of the *commonalty*, they should have the Odino meadow, for the support of their house.

Also it was ordained, and agreed *by the whole commonalty*, that the laws, and free customs of the town, should be put in a roll, which should be called the *Doomsday*:—and that such roll should always remain in the custody of the four for the time being, that they might hear and understand in what manner they ought to act in their office.

Doomsday.

That all the *statutes of the guild-merchant*, should be put in a certain *other roll, in manner as are elsewhere used in cities and boroughs, where there is a guild-merchant*,—and that the alderman should always have such roll in his possession, that he might know how to act in his office.

Guild-Merchant.

Inasmuch as divers *religious persons*, and their tenants, claimed to be more free and quit of toll in the town of Ipswich than they used in times past, it was commanded by the bailiffs aforesaid, that a *good inquest of 24 good men and lawful* be made, to come and inquire how and in what manner they ought to be quit—and that the inquisition be before the bailiffs on Thursday next after the Feast of St. Luke next ensuing.

Religious Persons.

On Sunday next after the Feast of St. Dionysius, in the same year, the *Prior of the Holy Trinity in Ipswich* became a burgess; and he gave to the *commonalty 20s. in aid of the expenses which were incurred in obtaining the new charter*. And to the *house of the town guild* one quartern of wheat,

John. and one boar. And was sworn to maintain the liberties of the town, and to be at *scot and lot*, as a *resident burgess*.
Scot and Lot.

The Prior of St. Peter in Ipswich, gave to the *commonalty* one mark,—and to the *guild* a coomb of wheat, and two wethers.

On Thursday next after the Feast of St. Luke, in the 2nd year of the reign of King John, the bailiff of Ipswich made an *inquisition*, by *twelve good and lawful men* of the same town, stating how and in what manner the aforesaid religious persons, who had lands and tenements in the country in the neighbourhood of the said town, ought to be quit of toll of the same town, and say upon their oath, that the *men* of the *Archbishop and Prior of Canterbury* were quit of toll in the said town of Ipswich, for all their things which grow and renew in the fee of the church of Canterbury only, and also for all their own things bought for their own use, and not otherwise; and this is testified by the writ of the lord the king. But for their *merchandises bought and sold as merchants*, they have always paid their custom towards the firm of the lord the king, and so they ought to pay.

Norwich.
 Villains.

Also they say—that the *Bishop and Prior of Norwich*, and all their *villains*, are quit of toll for corn, and other their goods growing and remaining in their own lands and demesnes only, and for all things bought for their own necessities, and not otherwise. Yet nevertheless their *villains*, who are merchants, ought to pay their custom towards the king for their merchandise; and as they have always been accustomed to pay in times past.

Also—that the Bishop and Prior of Ely, and all their *villains*, and also all the men of the Bishop of *London*, are quit of toll in like manner, and not otherwise.

Also they say—that the Prior of the Hospital of Batisford, and all his men *dwelling and resiant* upon the fee of the hospital, are quit of toll for all goods and things growing and remaining in the fee aforesaid; and moreover they believe, that they are quit for their merchandises.

Also—that the Templars, and all their men who are *dwelling and resiant* upon the fee of the Templars, are quit of toll

in like manner,—yet nevertheless *not for their merchandise*, John.
bought and sold as merchants.

And that the *Abbot* of St. Edmund, the *Abbot* of Ley- 1200.
stone, the *Abbot* of Syreton, the *Abbot* of St. Osith, the
Abbot of Colchester, and the *Abbot* of Coggeshale, are quit
of custom for their own things, growing and remaining in
their own lands only, and for all their own things, bought to
their own use. But for all things of the same abbots, whe-
ther they be quit of customs, they say that they know not.

Concerning other religious persons in the country, they
say that how, or in what manner they are quit, or ought to
be quit of their own goods, growing and issuing out of their
lands pertaining to their churches, and which they held in
frank almoigne, they know not.

Lord Roger de Bigod,* Earl of Norfolk, and marshal of
England,—in the hall of the prior of St. Peter of Ipswich,
became a burgess of the town, and gave to the guild-mer-
chant—one ox—one bull—two quarters of wheat—two quar-
ters of malt—for this; that the same earl, his *villains*, there-
after should be *quit of toll* in the town, that is to say—of all
kinds of corn, and other his things, growing and renewing
upon his own lands and demesnes only, and of all things
bought for his own estovers, and not otherwise:—paying
yearly for ever at the Feast of St. Michael, 4*d.* for *his*
quay in Ipswich towards the farm of the town.

But if his *villains* be merchants, they should pay to the
farm of the lord the king, his right and due custom, and
especially for their merchandise. And insomuch as the
same earl was assisting in obtaining the charter of the
lord the king of the liberties of the town, he granted and
promised on his honour to maintain the honour of the town
of Ipswich, and the liberties in the said new charter
contained.—And the earl hath a copy of this enrolment in
his possession, under the common seal of the town.

Sir Robert de Vaux, knight of the said earl, was on the

* The people of France used to call the Normans, "Bigods," because at every
other word, they would swear—"by God." And hence, this family coming from
Normandy, was known by this national characteristic name.

John. same day *made* a burghess, and he gave to the hanse of the *guild*—one quarter of wheat. And that he and all his *villains* whom he hath in Wenham and Menham be quit in *Ipswich* of all toll in manner and form aforesaid, he hath granted to give every year on the Feast of St. Michael, to the four of the aforesaid town, 4*d.* and two bushels of wheat.

The Lord Gilbert Peche the same day *became* a burghess, and gave to the *guild* of the town, one quarter of wheat. And granted to give yearly for himself and his *villains*, in the tourn of the town aforesaid; that they be quit of toll in manner and form aforesaid, 8*d.* and two bushels of wheat. Provided nevertheless, that if his *villains* be *merchants*, they should pay their custom to the farm of the lord the king, for all their merchandises.

Lord Roger Montalt was *made* a burghess, and promised to maintain the honour and liberties of the town; and granted 4*d.* and two bushels of wheat yearly to the farm of the town, that he, and all his *villains* of *Framesdane*, be quit of toll, for all their things growing and renewing in their own lands and demesnes, and for all things brought to their own use.

Lord Hugh de Rous became a burghess, and gave to the hanse of the *guild*, one bull and one quarter of wheat.—And annually to the farm of the town, for himself, and all his *villains* in Akenham, Henryngston, Husketon, Henleye, and Menhere, 8*d.* and four bushels of wheat, to be quit of toll, &c.

Lord Will. de Treeney *became* a burghess, and gave to the hanse of the *guild*, two sheep and 12 capons.—For his *villains* in Bushmen and Busete, 4*d.* and two bushels of wheat, to be quit of toll, &c.

Gilbert de Reymers *became* a burghess, and gave to the hanse of the *guild*, one quarter of malt.—For his *villains* in Wherestede, 4*d.* and two bushels of barley.

And be it known, that all the *villains*, as well of the aforesaid earl as of the other burghesses aforesaid, should always give their custom to the *farm of the aforesaid town*, of all their merchandises to be bought and sold in the aforesaid town of Ipswich;—as he had always been accustomed to give.

In the said fifth year, the great fosses were made of the

said town of Ipswich, by the aforesaid king, and by aid of John.
the whole country, and of the county of Cambridge.

Nothing can be more precise or distinct than this document; and being almost the only instance of which we are aware of an equally particular description, it is very important to the present inquiry,—and will afford a clue, enabling us to unravel many of the difficulties arising out of the early charters, through which it might otherwise be difficult to find our way.

It should first be observed, that the “*whole town*” are assembled to act upon this new charter; that they elect the two bailiffs and four coroners, who are directed to be elected by the *common council*—thus defining those terms in the manner we have before explained. And it must be remarked, that the commonalty have ever since acted in Ipswich;—that in the reign of Edward III. they joined in the election of the members to Parliament, and afterwards partook in that right.

Common
Council.

It is then directed, that there should be twelve capital portmen in the manor, as they are in other free boroughs in England. The meaning of the term portmen, being, in fact, “*the men of the town*;” and there being no previous election or nomination of them, as burgesses—it is clear, that the men of the town, or the *inhabitants* there, were treated as the burgesses. We find that these ordinances, like the charter, describe the election and swearing of these twelve capital townsmen *as usual in other free boroughs*. And as other free boroughs had, by the law of the court leet, *juries*—whose duty it was to do the acts here prescribed for the 12 portmen—it is obvious, that these persons being sworn, were the jury for the year, in the same manner as the “*jurats of the cinque ports*.”

Portmen.

Inhabitants

The whole town, who elected these persons, are called the “*commoners*” and the “*commonalty*;” and the election is by the assent of the town:—they are stated to be sworn in by the whole town; and a part of their oath is, that they should justly render the judgments of the courts of the town. By the common law, the only courts at which all the people were bound to be present, were the sheriff’s tourn in the

Common-
ners.

John. county at large; and the court leet in the boroughs. And as all the town are said to be present, it may be assumed, that this was the court leet; particularly as the whole of the townfolks are stated to be *sworn* there,—which could only be legally done in that court.

The persons who concur in the election of the portmen, and those to whom the charter was delivered, are described, in the language of the common law, *as good and lawful men of the town*. And it must not be forgotten, that the portmen elected are appointed by the whole town, and have only a delegated authority from them—which it is in the power of the body who created them, at any time to withdraw. Practically speaking, our nature almost requires it—considering the uncertainties of health—the difficulties of time and space—the numerous avocations of mankind—that large bodies should act through smaller, selected and delegated by them;—and therefore, such an election as this specified in the Ipswich roll, was necessary to carry the charter into effect. But the whole utility, confidence, and legality, attending their appointment, rests upon their having a *delegated*, and *representative*, and not an original authority. A power capable of being put an end to, if abused:—a power responsible to those who gave it:—in short, a power resembling in substance, though not in name, those select bodies which, in modern language, are called *committees*; and which the good sense and practical experience of mankind, have found to be essentially necessary, for carrying into effect the intentions of large aggregate bodies.

This gives a plain solution of the principles upon which such bodies were originally appointed; and falls in with the feelings and habits of mankind—and not practically opposed to them, like the self-elected *common councils* of corporations, assuming to act from an *original*, and *not a delegated* authority.

The ordinances made by these *portmen*, were for the practical government of the town. They speak expressly of the assent of the whole town, as *the common council*: they speak of the “*commonalty*” and of the aldermen—of the guild and

the men of the guild,—as including only a part of, and separate from, the whole body of the *burgesses* and *commonalty*. There can be no doubt, that the commonalty and the 12 portmen were not the same body—the latter being selected from the former, and distinct from them; though by the erroneous statements of some writers, particularly Brady, and the perverted usages of many places—such select bodies, and the commonalty at large, were often confounded together. But here it appears that they were separate, for the *portmen* requested from the *commonalty* an allowance for the labour which they had in their behalf: and the regulations were made by the consent of the *whole commonalty*.

John.

The separation also of the guild-merchant from the general body of the *burgesses*, is shown by the directions, that their statutes were to be kept distinct from those of the borough—which is stated to be the manner adopted elsewhere, in cities and boroughs where there were guild-merchants.

Guild-Merchant.

The regulations with respect to exemption being enjoyed by *religious persons*, and the *villains* of *abbots* and *priors*—are precisely in unison with the doctrine we have before laid down; as well as the fine paid to the common stock, towards the expense of obtaining a new charter, whenever a person became a *burgess*, who is expressly directed to pay *scot and lot*:—and as it might be a question whether the prior, though residing in Ipswich, or within the limits of it, might not be considered within its jurisdiction, as he lived upon an ecclesiastical fee, it was declared that he was to pay *scot and lot*, as a *resident burgess*. And in the question, as to the exemption of the men of the templars, and others, they were distinctly described, in the language of the common law—as *dwelling and resiant* upon the fee.

Scot and Lot.

The persons made *burgesses*, who were to contribute to the common stock of the borough, appear to have been connected by property with the place; and probably were resident there. At all events it seems that it was in consideration of their rendering their custom to the farm of the town,—in effect paying *scot and lot*,—that they and their *villains* were to be quit of toll.

John. In the same year of this king's reign, a charter was also given to the *burgesses* of Dunwich, granting that it should be a *free borough*; and have soc and sac, toll, them, and in-fangthef.

Dunwich.
1199.

That the *burgesses* should be free of toll, lastage, and passage, &c.; with all other customs, saving the liberty of the city of London. That they should render their accustomed farm by their own hand. That they *should do no suit of counties or hundreds*, unless before the king's justices. And when summoned before them, they might send for themselves 12 *lawful men of their borough*, who might be for them all. And if by chance they ought to be amerced, they should be amerced by six just men of their own borough, and by six honest men *without* the borough.

That their sons and daughters might freely marry where they willed—and widows in the same manner, by the counsel of their friends.

That they might give or sell their purchases of lands and buildings in the town, or do therewith what and when they willed.

And *also* might have a hanse and guild-merchant, as they might have been accustomed.

Merchant
Guild.

This charter is quoted by Brady, and inserted in his Appendix, to support his doctrine—of the guild being the origin of the borough; but it does not appear to have had that effect; for the making it a free borough was separate and distinct from the grant of the hanse and the guild, as we have before observed with respect to many other places.

It would seem that this grant did not make it a borough, because the *burgesses* were mentioned in Domesday, as having existed in the time of King Edward; and the charter was given to the *burgesses* as an existing body.

The effect of it in all probability, was only to release them from their tenure of the king, and from the services incident thereto; upon their paying the fee-farm, which was reserved.

Juries.

The 12 men by whom they were allowed to appear, seem to be analogous to the 12 *portmen of Ipswich*:—and unless we

* See Brady's Appendix, 13. Rot. Cart. 1 Joh. m. 8.

John.

are to assume that this gave to these two boroughs, a privilege which London, and the other larger cities of the kingdom did not possess,—we must conclude that this was a common right, though it has been in these instances particularly expressed; and the most reasonable inference would be, as we have drawn with respect to *Ipswich*;—that these 12 men were the jury of the court leet for the time being, like the jurats of the *Cinque Ports*, and other places in Kent. A farther confirmation of which position may be found in the fact, that in the reign of Henry V., many of the returns to Parliament were made in the county courts by the juries, as deputations from the different boroughs.

The marriage of the sons, daughters, and widows, appears to be a more dilated provision for the liberties which were granted to the “burghwara” of London, by William I.:—and the liberty to dispose of their lands, corresponds with the same charter, the Saxon Laws, and the numerous entries to which we have referred in Domesday.

This king also granted a charter to Dunwich, in the seventh year of his reign, remitting to the burgesses some arrears of fee-farm, upon condition that they should render an account of it for the future; and adding the grant respecting pledges, which we have met with so frequently in other charters.* All their privileges are given to them and their *heirs*, which shows, contrary to Brady’s supposition, that *they were not incorporated, either by the grant of the borough at fee-farm, or by that of the guild-merchant.*

1206.
Second
Charter.

In the 17th year of this reign, a third charter was granted by this king to Dunwich.† It was a confirmation, for their faithful services, to the *honest men* of Dunwich and their *heirs*, of the borough at free burgage, and of the merchant guild, with hanse, and other customs and *liberties* to that guild belonging.‡

1216.
Third
Charter.

That it should be lawful to them *in* their burgh, to take bail of their debtors, and pledges of all debts which should be owed to them. That they should never plead, or be

* Rot. Cart. 7 Joh. m. 6.

† Rot. Cart. 17 Joh. m. 8.

‡ 1 Petit. MS. 18, In. Temp. Lib.

John. summoned to plead *without* their borough, but should stand to right in their own borough, before the justices or bailiffs.

For although any one of them should be appealed, they should not wage their battle, either *in* or *without* their borough; neither of land, theft, felony, nor other thing, unless only of foreign men.

But if any one of the borough should be appealed of any felony or homicide, he should purge himself by the oath of 24 *free and lawful men* of the neighbourhood.

Natives. If the *native* of any man should have *dwelt* in the borough, and held land there; and should have been in the guild and hanse, and in *scot and lot* with the same burgesses, by a year and a day, then he should not be reclaimed by his lord, but should remain free in the same borough.*

Sac, soc, toll, them, and infangthef, were also granted;—that they and their men, with their chattels and ships, and all their things and possessions should be free from murder and lestage, passage, pontage, stallage, danegeld and gaywigte—and all other customs and exactions, as well in England, as in all other the king's lands. That they should be free to marry their daughters, whenever they could and would, without the license of any one; and that no one should have any power to marry them but by their consent; neither in the lives of their fathers, nor after their decease; and that nobody should have the custody of their sons or daughters, or heirs of their lands, or goods, but their proper parents and friends, or those to whom they have themselves provided and assigned the custody.

That none of their sons or heirs should be obliged to marry but at their will, and that their widows might be in their proper gift, and at their proper will. “That they might freely buy and sell when they would, and appoint whomsoever they would their heir;” with a confirmation to them and their heirs, of all the liberties they had been accustomed to enjoy—and *which any of the cities or boroughs had*, either in England or in any other of the king's lands.

Notting-
ham.

This king also confirmed the free customs, which *Notting-*

* See Glanville and Nottingham, before.

ham had in the time of Henry I. and Henry II., with the tolls for passing over the Trent, which probably arose from their having originally had the keeping of the water of that river, as mentioned in Domesday.—Directions were also given respecting the carts and pack-horses, and dying of cloths. And a provision occurs respecting *villains*, in spirit the same, as the passage in Glanville to which we have before so particularly referred;* the clause was in the following words:

John.

Villains.

If any one (from what place soever he be) *shall dwell* in the borough of Nottingham one year and one day, in time of peace, and without claim, no person afterwards *but the king* shall have right over him.

After which succeed the following clauses:

And whoever of the burgesses should buy the land of his neighbour, and possess it by one *whole year* and *one day*, without claim of the kindred of the seller—if they should be in England—should afterwards quietly possess the same; nor before the reeve should any one of the burgesses be made to answer to the claimant, unless he should be an accuser in the cause.

Buying lands.

And whosoever should *dwell* in the borough, of what fee soever he might be, he ought to pay talliages, together with the burgesses, and supply the deficiencies of the borough.

Resiants.

Also, all those who should come to the market of Nottingham, from the Friday evening to Saturday evening, should not be distrained, except for payment of the king's farm; and the passage of the Trent ought to be free to navigators as far as the extent of one perch on both sides of the midstream.

The king also granted and confirmed the *guild-merchant*, with all the liberties and free customs which to a guild-merchant appertain; and that they be quit of toll.

And that it should be lawful for the burgesses to make for their *reeve* whom they would, *from themselves*, at the end of the year; who should answer for them as to the farm; so that, if the same reeve displeased the king, he would remove him at his will, and they should substitute another at the king's pleasure.†

* See Glanville. † Rot. Cart. 1 Joh. m. 22.

John.

The reader will observe, that the right of the king over his villain is here preserved, upon the ground, that “*nullum tempus occurrit regi;*” upon which we have commented before, on the passages in Glanville, where the entire freedom of the villain was made to depend on the charters of the king: accounting for resiances for a year and a day being limited to a privileged place; that is, a place under a king’s charter. And it should be remembered, that this would be the effect of all those charters, whether expressed or not. Therefore this clause is only another instance of a special and express provision in a charter, of a matter which is omitted in others, but tacitly implied in all: so that, although they vary in form, they are in substance the same.

The provision in this charter—that those who *dwell* in the borough, of whatever fee they are, should contribute with the burgesses—is in conformity with the frequent comments we have made upon the passages in which the burgesses belonging to other manors were stated to be resident in the boroughs.

This king also granted a confirmation of the charter of Henry II. to *Newcastle-upon-Tyne*: and also another charter for the liberty of buying and selling dyed cloths, which they had before enjoyed in the reigns of Henry I. and Henry II. with the town at fee-farm to the burgesses.

1200. And by another charter in the 14th year of his reign, he granted again to his *good men* of *Newcastle-upon-Tyne*, and their *heirs*, the town, and all its appurtenances, at the *fee-farm* of 100*l.*, and also 110*s.* and 6*d.* rent in the same town, of escheats;—to be divided and assigned to them who had lost their rents by occasion of the *ditch* and new works made under the *castle* toward the water, so that they might have more who had lost more, and less who had lost less. Also that they should be answerable in nothing to the sheriff or constable of these things *which belong to them*;—wherefore the king willed that they should enjoy those things, with all liberties and free customs which they had been accustomed to have in the time of King Henry, saving the liberty of the town of London.*

The fee-farm, which was originally 50*l.*, King John, in

* Ret. Cart. 14 Joh. m. 2.

the 2d year of his reign, raised to 60*L.*, and it is here increased to 100*L.** John.

The exemption from the jurisdiction of the sheriff and the constable is limited to their own things—as the freedom from toll, &c. is limited in the prior charter of the 9th of February 1201—2 John.

This king also, by another charter,† dated in the 17th year of his reign, granted to his burgesses of Newcastle-upon-Tyne, and to their *heirs* for ever, that none of them should be distrained out of the same town, to pay to any one, any debt for which he was not chief debtor or surety—that none of them should be tried by battle—that they should be allowed to traverse in pleas of the crown, according to the ancient custom of the *city of Winchester*—that none of them should be judged of misericordia money, but according to the old law of *Winchester*, which they had in the time of the king's ancestors—that they should hold justly their lands and tenures, and all their mortgages and debts, from whosoever should owe them; and that right should be held with them, concerning their lands and tenures within the town, according to the custom of *Winchester*—that pleas should be held in Newcastle, concerning all their debts lent in Newcastle, and all mortgages there made. The king further granted, for the improvement of the town—that all should be quit of gersumme and scotale; so that no sheriff, or any other bailiff, should make scotale within the same borough. If, however, those customs had been unjustly levied in the time of war, they should be altogether annulled. And any persons, from whatever place they might be, whether foreigners or others, who should resort to the borough with their merchandise, should come, remain, and depart, in the king's peace, paying the due customs. 1216.

The charter, in conclusion, confirmed to them and their *heirs*, all other liberties and free customs, given before by the king's ancestors to them and their *heirs*.‡

This grant to the burgesses and their *heirs*; like those observed upon before, expressly gives the exemptions

* Rot. Cart. 2 Joh. m. 12.

† Brand's Hist. Newcastle, ii. 136.

‡ Rot. Cart. 17 Joh. m. 2, pars 1.

- John.** to exclude the interference of the sheriff, and the king's other bailiffs and officers.
- Foreigners.** The *extranei* are mentioned, as in many other charters, in contradistinction from the burgesses:—and it should be observed—that although the king's peace was secured to all who came with merchandise to the town, yet they were to be subject to the payment of the accustomed due; a right exercised in all times by the boroughs and towns, and continues in most of them to this day.*
- Cambridge.** The King also gave a charter to the burgesses of Cambridge:—who were to have their town at fee-farm, with such liberties as the free demesne boroughs of the king, having liberties, enjoyed.
- Grimsbby.** A similar grant was made to the burgesses of *Grimsbby*.
- Stafford.** And to the burgesses of *Stafford* and their *heirs*.† That it should be a free borough, with sac and soc—freedom from toll, *suits of shires and hundreds*, and all other free customs of the free boroughs of England. This charter expressly explains that which we have before stated with respect to London—that the privileges were to be enjoyed, not only by those who lived within the walls of the boroughs, but also by those in the *liberties*.
- 1208.** The freemen of Kingston also received a royal grant in this year, to hold their town at fee-farm, with all the liberties and free customs the town was accustomed to have. And that the *men* of Kingston, and their *heirs*, might hold the town for ever, freely and quietly.‡
- Helston.** The king also granted that the borough of *Helston*, which was not so mentioned in Domesday, should be a free borough. That the burgesses might have a mercatorial guild, with quittance of toll, saving the liberties of the city of London; and that the town should be granted at fee-farm.§
- Also the privileges contained in other charters, of exemption from pleading without the walls, &c. :—with the liberties and free customs which the burgesses of Lancaster had, in the time of Henry II.; so that *none of the burgesses, unless he was resident in the town*, should have those liberties:—

* This charter was confirmed by Henry III. † Rot. Cart. 2 Joh. m. 7.

‡ Rot. Cart. 10 Joh. m. 2. § Rot. Cart. 2 Joh. m. 5. Ibid. m. 3.

another instance of the expression of that, upon the face of the charter of a particular place, which would be tacitly implied, and is, in effect, *included in all*. And although in 1660, a committee of the House of Commons declared the *inhabitants* at large to be the *burgesses* of Helston; yet, in 1774, the *freemen* were considered to be the burgesses:—which, under the doctrine, that a person being once free, is always free, and continues so, although he resided elsewhere, let in the non-residents as burgesses, in defiance of the express provisions of the charter, and the former decision.

A grant was also made to *Marlborough*, reciting as before, in the charters to *Portsmouth*, that the king had retained it in his own hands; and granting a fair and market;—and that the borough and all the *men* in it, and tenants of it, *dwelling* there, and their heirs, should be free of toll, &c., with soc and sac, &c., and a mercatorial guild, like the citizens of Winchester. It is obvious that the tenants of the borough *dwelling in it*, must have been householders:—thus explaining the passage we have before seen in the charter of *Portsmouth*; although in that case the terms “dwelling there” were not expressly introduced.*

This king also granted to the burgesses of *Canterbury*,† a *mercatorial guild*; and that none of them should be impleaded without the walls, nor make duel. That the pleas of the crown should be discharged, *according to the ancient custom of the borough*; and all the *burgesses* of the mercatorial guild should be free of toll, &c.; that none should be adjudged in mercy of money, unless according to the ancient custom of the borough, which they had in the times of the king’s ancestors. And if any take toll or custom from the men of the mercatorial guild, the reeve should take namium thereof. A fair is then given, with a confirmation of all their previous customs.

There is a charter to the burgesses of *Salisbury*,‡ granting to them a mercatorial guild; and that they might be as free of toll, as the burgesses of Winton, who were of the mercatorial guild.

Also a peculiar charter granted to the *men* of *Andover*,

* Rot. Cart. 2 Joh. m. 16. † Rot. Cart. 2 Joh. m. 16. et vide etiam Cart. Ant.

‡ Rot. Cart. 1 Joh. m. 5. pars 2.

John. confirming rights given to them by Henry II.; that they
Andover. might have a mercatorial guild; and that they should be quit of toll. But it does not appear that it was made a borough, for that term was not applied to it; nor that of burgesses to the inhabitants.* And in the same reign, there was a grant to the *men* of Andover, of the manor, foreign, and hundred, to hold to them and their *heirs*.†

Merchant Guild. This charter, therefore, seems simply to have been a grant of a merchant guild—not confirming Brady's theory, "that the creation of such a body made a borough," but proving the contrary; for this is an instance of a place having a merchant guild, and yet not made a borough in the same manner as other places. This view of the grant is much confirmed, by its providing, not generally, that the men there should have the same privileges as the *burgesses of Winton*; but that they should have the privileges of the burgesses of Winton "*who are in the mercatorial guild*," they being separate, as before noted, from the general body of the burgesses of Winchester.

It will also be recollected, that we have shown a strong instance to the same point, in the reign of Henry II., respecting Totness.

Many grants were also made to other places, which it will be sufficient cursorily to mention.

Southampton. Freedom from toll was confirmed to the burgesses of *Southampton*.

Appleby. The *burgesses of Appleby* had liberties and free customs given to them; and their borough at fee-farm, to be paid to the sheriff.

Lancaster. *Lancaster* in the same manner, had a grant of the liberties of *Northampton*.‡

Dover. And the *men of Dover*, quittance of toll, as their ancestors had in the times of King Edward, William I. and II., and Henry I.§

Devizes. The burgesses of *Devizes*, a similar confirmation of the privileges granted by Henry II.||

Derby. To the *burgesses of Derby*, the free customs of the *burgesses of Nottingham*, which they had in the time of Henry I. and

* Rot. Cart. 2 Joh. m. 3. pars 1. † Rot. Cart. 15 Joh. m. 2. ‡ Ibid. 1 Joh. m. 5.
 § Rot. Cart. 2 Joh. m. 17. pars 1. || Rot. Cart. 2 Joh. m. 21. pars 1.

Henry II.; also a merchant guild—and the borough at fee-farm, to them and their heirs;—and that they might make a *reeve* from among themselves. John.

To the *burgesses of Wick* and their *heirs*, the borough of Wick at fee-farm, with a fair. Wick.

The *burgesses of Barnstaple* had their borough granted to them, with all the rights and customs as in the time of Henry II., removing all the bad customs which arose after his time. And that they should have the customs of London, as Henry II. had granted to them.

Lynn, at the request of the Bishop of Norwich, was granted to be a free borough,* and was directed, like Ipswich and Huntingdon, to have all the liberties and free customs which free boroughs have, saving the rights of the bishop, and the Earl of Arundel. Lynn Regis

There is also a grant to William Brewer, that *Burghwalter* should be a free borough, with market, fair, toll, &c, and all other liberties and free customs to a free borough, market and fair belonging: † summarily connecting the three together; which led Brady mistakenly to think, that markets and fairs were essential ingredients of boroughs; whereas the charter rolls abundantly show, that those privileges were indiscriminately granted to vills—manors—abbeys—priors—and individuals. Bridge-water.

The liberties granted to Bridgewater, were similar to those of Ipswich, Huntingdon, and Lynn, and other boroughs.

The *burgesses* were to be free, and to have all quittances of tolls and other liberties, saving that of the city of London. Markets and Fairs.

Ilchester was found by the inquisition of free and lawful men, ‡ to be entitled to the liberties of the citizens of Winchester, which they had by the charter of Henry II.;—afterwards by misfortune burnt. The liberties were granted to them and their *heirs*, with the town at fee-farm. Ilchester.

King John also granted the following charter to *Yarmouth*. Yarmouth.

We have granted, &c., to our *burgesses of Yarmouth*, § that they may have the *borough* of Yarmouth at fee-farm for ever. And that the same borough be a *free borough*, for

* Rot. Cart. 5 Joh. m. 14, et vide etiam, Rot. Cart. 6 Joh.

† Rot. Cart. 2 Joh. m. 27. ‡ Rot. Cart. 5 Joh. m. 5. § Cart. Ant. K. 35.

John.

ever, with *soc and sac*, &c. And that the same burgesses be quit of toll, &c. And that they do no suit of counties, or hundreds of tenures within the borough of Yarmouth. Also we have granted to the same burgesses, &c., not to plead out of the town,—acquittances of *murder*,—relief from *duel*,—and pleas of the crown, according to the custom of *Oxford*. That none should take a dwelling by force,—no *miskennings*,—*hustings once only in the week*,—a *mercatorial guild*;—with their law according to the laws and customs of *Oxford*,—pleas of debt, and pledges in the borough, &c.,—saving the liberty of the city of London. Moreover, to the amendment of the aforesaid borough of Yarmouth, we have granted that ~~five~~^{the} *merchants* may resort to the borough of Yarmouth with its *market*, of what place soever they may be, whether *foreigners* or others, who may be of our peace, or may come to our land, and of our licence may come, stay, and depart, saving our peace, &c., and rendering the right customs of the same borough. Also we prohibit every one from injuring the same burgesses, &c. Wherefore we will, &c., that the aforesaid burgesses of Yarmouth, and their *heirs*, may have and hold for ever all the things aforesaid of *inheritance*, well, and in peace, &c.

1200.
Hedon.

There is a peculiar charter, granting to Baldwin, Earl of Albemarle, and Hawis or Avis* his countess, the *free burgage* in Hedun,† to them and their *heirs*, in fee, and inheritance, so that *their burgesses* of Hedun, might hold freely and quietly in *free burgage*, as his burgesses of *York* and *Lincoln*, best, most freely and quietly did hold, with such customs and liberties, as King Henry II. granted to William, Earl of Albemarle.‡

Burgage
Tenure.

This charter appears by its terms, rather to support a burgage tenure right of voting, than either a corporation, or scot and lot right—still, however, burgage tenure never was insisted upon in this borough;—notwithstanding, this was its first creation:—for it was not mentioned as a borough in Domesday, or in any other document, before or after that period, till the present. It returned members to Parliament, in the 23rd Edward I., as Willis states:§—but that return

* See Camden, 579.

† The first charter to Hedon, was a grant by King Athelstan to "Thoma de Heidon," but which affords nothing material to our present researches. Vide Cart. Ant. N. 51.

‡ Rot. Cart. 2 Joh. m. 18, pars 1.

§ 3 Bro. Wil. 68.

Bury up view

was not noticed by Prynne, in his *Brevia Parliamentaria rediviva*.

John.

This charter of King John, was confirmed by Edward III., in the ninth year of his reign, and in the 51st of Edward III.; in which year Mr. Prynne says,* that there was a summons from the sheriff by a precept—but no election, nor return. Nevertheless in 1746, freemen by service, and honorary freemen, were held by Parliament, to be the burgesses of Hedon;—a striking instance of the strange conclusions drawn from the charters and records of different boroughs. For the burgages of Hedon, were expressly mentioned in this first charter, with a reference also to the burgage tenure of York and Lincoln:—and yet all these places, have had a corporate right of election established in them:—whilst, in other places, where there were no such direct traces of burgage tenure—that right has been adopted. The truth is, *that all boroughs were held in burgage tenure, and therefore, that right ought to have prevailed every where, if at all.*

The same may be observed of *Liverpool*, which had in this reign, a charter granted to it, providing, that all the king's subjects, who had taken *burgages* at Liverpool, should have all the liberties and free customs, in the town, which any free borough upon the sea hath.†

Liverpool.

If burgage tenure, was a real ground of burgess-ship, it ought to have prevailed in Liverpool:—but a corporate right has always existed there. If the burgage right, is properly excluded from Liverpool—considering this charter—it ought not to prevail any where.

That exclusive right, therefore, seems clearly untenable. But if the doctrine is adopted for which we contend, “that the *inhabitant householders* were the real burgesses,”—then, the whole is reconciled—The law of burgage tenure, applies to the houses held by the householders:—the corporation consists of the householders, who have been admitted, sworn, and enrolled at the court leet, according to the common law:—and thus the burgesses, who ought to have returned members to Parliament, and to have enjoyed all the

* P. 159.

† Rot. Pat. m. 5. 2 Petit. MS. 66. In. Temp. Lib.

John. municipal privileges, were the *sworn incorporated burgage-*
 Hunting- *householders, paying scot and lot.**
 don.

The king also confirmed to the burgesses of *Huntingdon*, the borough with all its appurtenances:—to hold to them and their *heirs* at fee-farm:—and that they should have all such liberties and free customs, as any other boroughs or burgesses in England, and which the burgesses *dwelling* in the borough, then had, or might have had; excluding the interference of all officers of the king.†

The reader will remember, that this reference to the liberties and customs of other boroughs, was the same as that of the charter to Ipswich: and tends strongly to support the conclusion, which the uniformity of the greater portion of the charters so strongly authorizes—that all the boroughs originally had the same privileges—and that the successive confirmations were intended to continue them in the same uniform state; excepting, that the anxiety or caution of the different applicants for them, might introduce some slight changes in their words or form.

Wells. A charter was granted at this time, to *Wells*, making it a free borough, and directing, that all the *men* of the town, and their *heirs*, should be free burgesses.‡ As *Wells* does not appear to be a borough in Domesday, nor is there any other document to show that it was so before this time, we may infer that this was the charter of its creation as a borough, it having been previously an ecclesiastical possession, in the hands of the bishop.

Hunting- Brady affirms, that the charter of *Huntingdon*, which was
 don. a mere grant of the borough at fee-farm, made it a borough: but he is clearly mistaken in that respect, because *Huntingdon* was returned as a borough in Domesday, and the charter of this reign, was only a *confirmation*, and did not, like this of *Wells*, make it a free borough. And there were also similar grants in this reign to other places, not making them
 Sandwich. free boroughs, thus to *Sandwich*:§—which was not mentioned as a borough in Domesday; and by *inspeximus* in a charter of Edward III., in the 38th year of his reign, it is recited—that

* Pet. MS. vol. i. B. 369. In. Temp. Lib.

† Cart. Ant. E. 26, dorso; et etiam, B. 25.

‡ Rot. Cart. 7 Joh. m. 8.

§ Rot. Cart. 7 Joh. m. 11.

King John granted a charter to the men of *Sandwich*, that they should have all their rights, customs, and quittances of toll, as they had in the time of Henry II., Henry I., and King William; and that they should not plead, unless when they ought to plead.—Not, as in other boroughs, that they should not plead out of the borough; but obviously referring either to their pleading in their lord's court, or at the court at Shepway.

John.

A grant was also made to the barons of Hastings,* that they should enjoy all their liberties, as they did by the charters of Henry II., with strand and den at Yarmouth—and all liberties as the king's freemen, they performing their accustomed services in ships.

Hastings.

There were also grants to the barons of Pevensey, to make a town upon the Saltune, to be held by the liberties of the Cinque Ports. And grants to Winchelsea and Rye.†

Pevensey.

A charter to the *men* of Hythe,‡ is of a different description, for it gives acquittance of shires and hundreds—which as we have observed before, is one of the first characteristics of a borough; the pleading at Shepway is mentioned, and there is a general confirmation of all the liberties enjoyed in the reigns of King Edward, William I. and II., and Henry I. and II.

Hythe.

So also there is a grant—as appears by *inspeximus*, in the 5th of Henry VI.—at fee-farm, to the Earl of Essex, and his heirs, of the *manor of Aylesbury*,§ which is not mentioned in Domesday,|| as a borough—but the grant contains the usual privileges of soc and sac—freedom from murder—with a grant of the view of frank-pledge—and exemption from suits of shires and hundreds.

Aylesbury

To the same earl, was granted a fair and a market at Agmondsham,¶ which was not mentioned as a borough in Domesday.

Agmondsham.

In which predicament *Wycomb* also stands:—the manor being granted in this reign to an individual.**

Wycomb.

“ Henry III., immediately upon the death of King John, came with his counsellors and tutors to Bristol, as to a safe place; when *he permitted the town to choose a mayor*

Bristol.

* Rot. Cart. 7 Joh. m. 4, in dorso.

† Rot. Cart. 7 Joh. m. 10.

‡ Rot. Cart. 7 Joh. m. 10.

§ Rot. Pat. m. 14.

|| Rot. Cart. 5 Joh. m. 6.

¶ Rot. Cart. 2 Joh. m. 5. pars 1.

** Cart. Ant. Z. 9.

John. “ *after the manner of London*; and with him were chosen “ two grave, sad, worshipful men, who were called prepositors, there being neither sheriff nor bailiff.” And it is said, that at this time leave was given to the burgesses to choose a mayor annually.

All the Bristol calendars assert it, they all name *Adam le Page as the first mayor*, and Stephen Hankin and Rainold Hazard as the first *prepositors*;—and they continue the series without interruption from them. From this time they contain a regular chronicle of events; yet, so far as can be discovered, no original charter for the election of a mayor nor *inspeximus* has been found.

Axbridge. *Axbridge*, which was a borough in the time of Domesday—but has never sent members to Parliament—was in this year granted to the Archdeacon of Wells,* with Chedder and the hundreds of Winterstoke and Chedder, with a market and fair, sac and soc; that the tenants were not to be put on juries; acquittance of shires and hundreds;—and the sheriff not to intromit. With other provisions, as to murder—pleas of the crown—prisoners—and the dues of the king, which it is not necessary more particularly to enumerate.

There were also grants to other places, which were boroughs having burgesses: but, never having returned members to Parliament, it may be assumed they ceased to be boroughs before the duty of sending representatives devolved upon that class of towns:—thus *Corbridge*† was granted at *fee-farm* to the burgesses—and a similar charter to *Robery*‡ and *Newburn*; and to the men of *Hertlepool*,§ that they should be free burgesses, with the same liberties and laws as the burgesses of *Newcastle*.

There were also at this period, several instances of manors granted at *fee-farm*, as *Odiham*||—*Pickering*¶—*Scalesby***—*Pokelington*††—*Driffold*.‡‡

SCOTLAND.

As we have seen that the charters of this reign continued in their essence and substance the same as those in the pre-

* From the Corporation Records, and see also Rot. Cart. 5 Joh. m. 4.
 † Rot. Cart. 2 Joh. m. 11. ‡ Rot. Cart. 2 Joh. m. 12. § Rot. Cart. 2 Joh. m. 13.
 || Rot. Cart. 5 Joh. m. 4, pars unica. ¶ Rot. Cart. 2 Joh. m. 14.
 ** Rot. Cart. 2 Joh. m. 14. †† Rot. Cart. 2 Joh. m. 14. ‡‡ Rot. Cart. 2 Joh. m. 13.

ceding, so also we shall find similar grants in the kingdom John.
of *Scotland*.

Alexander II., in the 2d year of his reign, which was the 18th of King John, granted a charter to the burgesses of *Inverness*; repeating, in effect, the grant of King William, to *Inverness*, which we have before referred.

King John himself also gave a charter to the *burgesses* *Dundee*. of Earl David, brother to the King of Scotland, of *Dundee*, that they should be quit of all manner of customs that pertain to the king, except in the city of London. We find the like grants in Ireland.

IRELAND.

King John, who as Earl of Moreton, during the reign of Richard I., had granted a charter to *Dublin*, in the 2d year *Dublin.* of his own reign, gave another to the *citizens* and their *heirs*, as well those *dwelling* without as within the walls, as far as the bounds of the city and liberty. It described the meares and bounds of the city;*—and granted the tenures within and without the walls, to be disposed of by the consent of the citizens in *free burgage*, by the service of land-gable, and to be held according to the custom of the city;—~~in~~ both of which we found so many instances in Domesday. As a corporate right of election has prevailed in Dublin, its being held by burgage tenure must be subject to the same observations we before made with respect to Liverpool.

The charter also granted the same privileges as those given to London by Henry II. and Richard I.—that they should not plead without the walls—with acquittance of murder and forced lodgings—freedom from tolls—and that no citizen should be amerced unless according to the laws of the hundred. The hundred court—analogueous to the hustings in the cities of London and Norwich—was to be held weekly—miskening in it was excused—with the usual provision as to debtors—pledges—and foreign merchants:—with this peculiar provision, that they were not to sell wine by retail, but on ship-board. The marriage and custody of sons and

* Rot. Cart. 1 Joh. m. 2.

John. daughters were provided for ; as well as the right of making wills with the consent of the city. And towards the close of the charter, there was a separate grant that the citizens should have guilds as in Bristol. The provost of the city was also mentioned.*

This king also, in the 17th year of his reign, granted another charter to the *citizens* and their *heirs*—that they might hold the city, with the *reeveship*, at fee-farm ;—and confirmed the charters of Henry II.†

1209. Allured, Prior of Innistock, granted to the *burgesses* of Innistock. *Innistock*, the liberties which burgesses ought to have, and he ought to confer, to wit : that no burgess should be called to answer of any plea which might happen within the bounds of the borough in the court of the Prior, nor elsewhere, except in the *hundred of the town*—*such hundred to be held in the town*.

No burgess to be amerced, unless *by judgment of the hundred* ; and if any should be, he was to pay 12*d.* ; of which 6*d.* was to be to the prior, and 6*d.* should be pardoned to him.

The *hundred to be held* once a week.

No burgess to be called in question of *miskenning*.

No foreign merchant was to be at liberty to sell cloth by retail, or to have a tavern for wine, unless *for 40 days*, and by the decision of the borough.

The burgesses were to have a *merchant guild* ; and other guilds :—with all liberties belonging to them, as was the custom of other good boroughs.

Common of pasture was given to the burgesses.

No burgess was to be compelled to produce his chattels, unless security be given to return them at a certain time ;—if any burgess should willingly lend them, they should be returned by 40 days, unless some particular time was fixed.

Power was given to the burgesses to make *free tenants* by 20 feet of land, so that they might have common liberty with the burgesses ; and they and their *heirs* were to hold their *burgages* freely, quietly and *hereditarily*, with three acres of land assigned to each burgage ; rendering annually 12*d.*—6*d.* at Easter and 6*d.* at Michaelmas.

* Rot. Cart. 2 Joh. m. 21.

† Rot. Cart. 17 Joh. m. 9.

It was declared to be the constitution of the burgesses, John.
that every burgess after the first seisin of his land should *reside*
in the same town in his own proper person, vel per inter positum,
within *three weeks*; or he should for ever lose his tenement.

No assise of victuals was to be made in the borough,
unless by the consideration of the bailiffs and burgesses.

King John also, towards the close of his reign,* confirmed Limerick.
to the burgesses of *Limerick*, the charter which the bishop
of Norwich had granted to all those who had taken, or
should take, of the citizens of Limerick, lands *held in bur-*
gage;—and confirmed that they and their *heirs* might hold
their lands for ever.

In the same year, he also granted to the burgesses of Dungar-
Dungarvon, and their *heirs*, all the liberties and free customs von.
of Bristol.†

WALES.

That which we have already observed with respect to
England, Scotland and Ireland, will be found to hold good
also in the boroughs of *Wales*.

Thus—that burgages existed in the Welsh boroughs, ap-
pears from a charter granted in the 6th year of King John
to the church of Morgan, by which, amongst other things,
“*burgages*” in *Cardiff* and *Kenfeg* are given.‡

The *burgesses* of *Carmarthen* were made free of toll in con-
firmation of a charter of King Henry II.§ Cardiff.
Kenfeg.
Carmar-
then.

So also there was a grant at the request of the Earl of Pembroke.
Pembroke, that the *burgesses* of *Pembroke* should be quit
of toll, and have a fair.

Likewise a charter to the *burgesses* of *Cardigan*, that they Cardigan.
be free of toll and customs, except in the city of London.||

And a grant to the *burgesses* and their *heirs* of *Swansea*, Swansea.
that they might trade throughout all the kingdom, with all
privileges and free customs, &c. (except in the city of
London.)¶

* Rot. Cart. 17 Joh. m. 8.

† Rot. Cart. 17 Joh. m. 9.

‡ Rot. Cart. 6 Joh. m. 5.

§ Rot. Cart. 2 Joh. m. 16.

|| Rot. Cart. 1 Joh. m. 15, pars 2.

¶ Rot. Cart. 16 Joh. m. 2, pars 2.

John. King John confirmed several charters granted by the Earls
Chester. of *Chester* to that city, with the grant of privileges in Ireland by Henry II.

MAGNA CHARTA.

Having now passed over the several charters granted to particular places during this reign, we must not omit the general confirmation of them, which was given in the Great Charter of the realm. The church was to be free—all their liberties were granted to the *freemen*—and the distinction between them—the *liberi homines*—and the *villains*—to which we have so frequently referred from the commencement of our researches, was repeatedly recognized in the course of the charter.

The right of inheritance—the custody and marriage of sons—daughters—and widows, were regulated—as well as claims for debts, and pledges.

The merchants were protected in buying and selling in their journeys—and in their sales and purchases, according to the ancient rights and customs, without any bad tolls.

A special provision was made for the talliages and aids, liberties and customs, of the city of *London*, with *all other cities, boroughs, towns, and the Cinque Ports*.

It was also expressly provided, that the city of *London* should have its ancient customs and free liberties.

The pledges given for offences and usurpations in the forest were mentioned, and directed to be amended by 15 knights, who ought to be chosen by the *good men of the county*.

The king was to make justices, constables, sheriffs and bailiffs, of such as knew the law, and were willing to observe it.

The restoration of the property in Wales which had been seized is provided for—as well as the rights of the King of *Scotland*.

The distinction between the clergy and the laity was observed in this charter;—and the former were to be amerced only according to their lay tenements.

It was also expressly provided—that no *county court* should

be held for the future except from month to month; nor should the sheriff, or his bailiff, make his *tourn* through the hundred, except twice in the year; and only in the accustomed place, at Easter and Michaelmas. So also the view of frank-pledge should be held there, but that every one should have his liberties which he had and ought to have, in the reign of King Henry II.;—affording the reason for the commencement of legal memory in the first year of Richard I.*

John.

Legal
Memory.

The charter then proceeds, almost in the words of the Saxon laws, that the "*view of frank-pledge*" shall be so made that the king's peace might be preserved, and that the *tithing be whole*, as it used to be.

The Great Charter contains a considerable portion of the provisions previously granted to particular places,—such as that their *heirs* should inherit;—the custody, and marriage of sons, daughters, and widows;—assise of wine;—disposition of intestates' property;—forfeitures for theft;—and particularly the holding in *burgage*, as a species of *socage tenure*, was expressly recognized.

That we may not altogether pass over any public documents of this reign, from which we might discover the usage and practice of that period—we would observe, that in the regulations of the assise for money, in the 6th year of King John, it was directed—that certain inquests of offences respecting coin should be made by the *free and lawful men* in the cities, boroughs, and towns "*per liberos et legales homines*." The same class of persons—being of free condition, and sworn to the law in the court leet—to whom we have so frequently referred as the burgesses.

Free and
lawful
men.

In the 6th year of this reign we find an entry—in conformity with the Saxon laws—relative to the flight of ten malefactors: and a person who had received an outlaw into his house, and made himself a companion of him, was amerced.†

* And see post., p. 432, Confirmation of Henry III.

† Rot. 2. MS. In. Temp. Lib.

John.

We ought cursorily to observe, that King John upon his recall of the exiled clergy swore, amongst other things, that he would restore all the laws of his ancestors, and particularly of *King Edward*:—and would revoke all unjust laws.

Again at St. Alban's,—the king ordained that the laws of Henry I. should be observed throughout the kingdom,—that all unjust laws should be altogether annulled;—also scottales—so frequently the subject of specific exemption in the local charters.

Conclusion

We have now collected and commented upon such documents as we have thought necessary and material during this important reign; and after having considered the charters minutely, it is unnecessary to add any further observation, excepting the recollections—that all *the boroughs are founded upon their separate jurisdictions*, resulting from *their exemptions from suits of shires and hundreds*:—and throughout the whole of this reign there is no *trace of a corporation*,—but all the charters were granted to the burgesses and their *heirs*. And if there were no municipal corporations—which is most clear, during those two reigns of Richard I. and King John—then, even without the additional documents and arguments which we shall produce hereafter, it will have been indisputably demonstrated, that *there can be no municipal corporation, by prescription—nor prescriptive corporate rights*.

Successors.

We have observed, throughout our quotations from the charters, that they were granted to “the *burgesses* and their *heirs*;” there is no instance of any—“to them and their *successors* :”—a strong proof of the doctrine of corporations not being at that time applied to burgesses; particularly as the mode of taking in succession was by no means unknown, or the terms “successors” unused, at that period. They were frequently adopted during this reign with reference to ecclesiastical property and persons. Thus in the first year of King John, there was a charter granted to the church of Christ Church *Canterbury*, the archbishop and their *successors*; the term occurring three times in the

charter.* In the eighth year of his reign there was another grant to the archbishop and his *successors*; the term being twice expressed in the charter, and distinguished from "*heirs*," as applicable to his men or tenants. John.

The grant to the archbishop and his *successors* occurred repeatedly in the same year;—in Magna Charta we have already observed—that *the heirs of individuals* were frequently mentioned.

In a plea in this reign,† between the burgesses and prior of Barnstaple, the latter answered "for himself and his *successors*, that all the *burgesses* and their *heirs* should be "free from talliages:" most clearly marking the distinction between the two. The term "*successors*" occurs again in the document, as well as *heirs*; but the former was never applied to the burgesses, nor the latter to the prior, or his monks.

Before, however, we quit this period, we should observe a few passages in Hume's History, which have circulated too widely, and been received with too much implicit confidence, not to require consideration. Hume.

That "the *boroughs* were, in the time of Domesday, little "more than villages, and the inhabitants dependent on the "king, or great lords, in a station little better than servile," is assumed without any foundation, as our extracts from Domesday will have shown. Whatever their situation might have been, it is obvious that they stood in nearly the same relative position with respect to the rest of the country, as they do at the present day. If there has been any change, the probability is, that they possessed then a greater comparative importance than they do at present; their *burgesses* being of free condition, which, at that time, was a distinguishing mark of no slight importance. Boroughs.
Burgesses.

Hume truly says,‡ "that they were not then so much as incorporated:" he adds—"they formed no community,—
"were not regarded as a body politic,—and being really no-

* Cart. Ant. T. 4, 5. † Rot. Pat. 8. m. 14. Petit. MS. In. Temp. Lib. 164 B.
‡ Hume, 2 App. vol. ii. p. 117.

John. "thing but a number of independent tradesmen,—living with-
 "out any particular civil tie, in neighbourhood together—
 "they were incapable of being represented in the states of
 "the kingdom." Observations clearly founded upon the
 common misconception of the real nature of corporations :
 —which were, in truth, nothing more than bodies autho-
 rized to sue and be sued under a corporate name ; and that,
 in those times, the body of burgesses were enabled to do
 without being incorporated, Mr. Madox has most satisfac-
 torily proved. Hume errs in supposing that the burgesses
 were no community nor body politic ;—they were both, and
 as much recognized as the other great bodies in the nation—
 the great body politic of the people—the communities of the
 laity—the clergy—of counties (which Hume seems to recog-
 nize)—of baronies — hundreds — wapentakes—forests—and
 other similar divisions.* And so far from their being inca-
 pable of being represented in Parliament—they were actually
 represented *nearly 150 years before any of them were in-
 corporated.* Whatever Hume or other authors may assert
 to the contrary—considering the peculiar nature of the bo-
 roughs in England—their origin, object, and connection with
 the administration of our particular laws, it is impossible to
 run a parallel, or maintain the analogy of our corporations
 with those of the French ; although, no doubt, in later times,
 —the principles of the civil law relative to those bodies have
 been adopted in both countries.

Hume, however, justly observes—that the institution of
 county courts in England has had a greater effect upon the
 government than has been distinctly pointed out by his-
 torians, or traced by antiquaries. His only error is in mis-
 taking the county courts,—for the *sheriff's tourn*,—and the
 analogous courts of the *leet* in the boroughs—in which the
 criminal law was administered, and the great objects of good
 government and effective police secured. Nor is he erroneous
 in calling this the *ancient—simple—and popular* judicature of
 our country ;—the abandonment of which he properly deploras.

Hume is also correct in saying that the charter granted to

* App. 2, p. 122, note M.

London, by William the Conqueror, was little more than a letter of protection, and a declaration that the citizens should not be treated as slaves, because they were to be considered as "free men" and "law-worthy." The truth is—that he seems to have been misled by Brady, in whom he placed implicit confidence; and from whom he assumes, contrary to the fact—that almost all the boroughs of England had suffered in the shock of the Conquest, and were extremely decayed between the death of the Confessor and the time when Domesday was framed. As it appears from that document, that although some few places had houses destroyed and wasted, in the greater number of instances, the houses—inhabitants—and rents—were much increased.

John.

HENRY III.

In the long reign of Henry III. we meet with many statutes—charters—and laws, which relate to the subject of our inquiry.

1216
to
1272.

1. As to the first, they occur chiefly at the commencement of the reign, when the king was a minor, and during the protectorate of the Earl of Pembroke, Marshal of England. Of these the principal were, the confirmation of the Great Charter—the charter of the Forest—the provisions of Merton—the statutes of the Exchequer—and that of Marlborough. The first is of course the most important, and the passages relative to this inquiry will be selected from it, as well as some few extracts from the other statutes.

Statutes.

2. The *charters* commenced chiefly about the 11th year of the reign, after the king's minority had ceased. They were numerous; but many of them were either confirmations, or resemble those before cited. These we shall only mention generally: any which differ materially from the preceding will be particularly noticed; but we venture to anticipate,—that the conclusion which will result from the whole of them,

Charters.

Hen. III. will be the same as that already drawn from the records of the preceding reigns.

Laws. 3. The *laws* will consist chiefly of Bracton and Britton, from which it will be apparent that the general principles applicable to our institutions (though much amplified) continued the same as they were in the reign of Henry II., when "Glanville" made his compilation:—at least with respect to the subject of our investigation.

Grand Customier. It was in this reign that the Grand Customier of Normandy* was composed, about 40 years after the accession of Richard I.

1222. The *Provincial Constitutions* made by Archbishop Langton, at *Oxford*, in the sixth year of this reign, show the efforts then made to exempt the clergy from all temporal jurisdiction, and from a participation in the ordinary burdens of the state.

Clergy.

Excommunication† was threatened to all those who, in prejudice of ecclesiastical liberty, presumed to burden religious men, clerks, beneficed clergy or their *men* living on *ecclesiastical ground*—with talliages, taxes, murage, tributes, expenses of fortifications, or of carriages, or other undue and unaccustomed exactions. And that this threat might operate strongly on all the people, notice of it was directed to be given by the priests in all the churches at Christmas, Easter, Whitsuntide, and saint days, in the vulgar tongue.

1260.

Again it was provided, that no *clergyman* should be *steward* or *bailiff* of any town, by means of which they might be bound to lay duties, or exercise secular jurisdiction, especially where there was judgment of blood.

Again, in the Constitutions of Boniface,‡ Archbishop of Canterbury, made at the Council at *Lambeth*, in the 45th year of Henry III., the strongest injunction was laid upon the archbishops, and all the clergy, that they should not allow themselves to be drawn under secular judgment; and the severest ecclesiastical punishments, of excommunication and interdict, were threatened against those, whether sheriffs or

* Pref. ii. Inst. See Grand Cust. ch. xxii. p. 29, a.

† See Lynd. in fine. p. 1.

‡ Lynd. in fine. p. 15, et seq.

bailiffs, who summoned or attached the clergy; from which Hen. III. threat not even the king was exempted, but on the contrary, was mentioned as subject to peculiar danger if he should so offend. Indeed the whole tenour of these Constitutions was to the same effect:—protecting them from proceedings by *quo warranto*—suits at *lay* courts—and other liabilities.

In confirmation of the preceding remarks, and arriving at the Great Charter of Liberties, renewed in this reign, we must observe that its first chapter provides—“that the *Church* “*shall be free*, and have all her own rights and privileges “*inviolable*.” 1262. Charter of Liberties.

By the 14th chapter of the same charter it was again ordained—that *no man of the church* (*ecclesiastica persona*) should be *amerced* after the quantity of his spiritual benefice, but after his *lay* tenement. Cap. 14.

The grant was made generally “*omnibus de regno nostro*,” 1224. Freeman. which in the English translation, is rendered, to all *freemen* of the realm—and properly so; because the first chapter, which immediately follows, expressly grants the liberties mentioned in it, to the *freemen* of the kingdom, and their heirs. The terms, *liberi homines*—which are met with so early in the Saxon laws, and used in the charters of John, were repeated here in many clauses of this charter of confirmation—from whence it appears, that it was also, at this period, the proper legal description of those who, during the reigns of John, Henry III., and Edward I., formed that important class in the community of the country.

The 14th section of the ~~same~~ *charter*, also mentioned *freemen*,—*villains*,—and *ecclesiastical persons*,—as well as merchants,—barons,—and earls;—which enumeration might probably be assumed to include, the principal *classes* of the *community* existing at that time. Cap. 14.

Again in chapter 15, as to repairing bridges—and also in chapter 24—the *freemen* were again spoken of. Cap. 15, 24.

The important protections afforded to the subjects of this realm, by the celebrated 29th chapter of this charter, were Cap. 29. expressly given to the *freemen*;—and there can be no doubt,

Hen. III. but that term included every person in the kingdom who was capable of enjoying any liberties—namely, “every person of free condition.”

Cap. 32. In the 32nd chapter, the *freemen* were prohibited from alienating their land, to such an extent as not to have sufficient for the lords of the fee to have their service.

That this term had a specific application to a particular class in society, may be collected—from its omission in some places, where a more general term was necessary, for the purpose of including as well *all villains*, as those who were free. Thus in the 34th chapter of the same charter, as to a woman's appeal of death, the term “*liber*,” was omitted, and the general term “*nullus*” was adopted.

Carta
Forestæ.

The expression, “*liber homo*,” was also used in the Carta Forestæ. In the 9th chapter of which it was provided,—“that every *freeman* may assist his own ward, and drive his swine, for that purpose, through the king's forests—and that no occasion shall be taken of it.” But in the very next chapter, where the subject was general—and not confined to any particular class of society—the term “*liber homo*” was omitted, and the general term “*nullus*” adopted.

Lawful
men.

Another term also common in the law, occurs in the 4th chapter of the confirmation of Magna Charta.—*Two lawful and discreet* men being directed to answer for the issues of the lands in ward.

In the first charter of William the Conqueror to London, he granted, as we have seen—that the inhabitants of the borough should be *law-worthy*; which we have before explained. Here the term occurs of *lawful* men (*legales homines*) in precisely the same meaning as those words in the charter of William I.—namely:—that having given their pledges to abide the law when called upon, they should be dealt with on all occasions as *lawful men*; and on this account be liable to do all services necessary for the state, as they received in return, the protection and privileges which the law affords them. The term was used in chap. 14 and 18. Also in the charter of the forest, chap. 1 and 6—In the provisions of Merton, chap. 6—The statute of the pillory, 51 Henry III.—

The Statute de Scaccario, Cotton. MSS.—The Statute of Hen. III. Marlberge, chap. 6.—The stat. Westm. prim. chap. 2—and West. 2, chap. 13.

This class of men were recognized by our earliest laws; and in the simple language of those times, called "*lawful men*," as contradistinguished from those who were wandering about from place to place, and had not given their pledges, or sworn their allegiance; which in strictness made them vagrants and outlaws, or *lawless men*.

Another term "*bailiffs*," to which we have had frequent occasion to advert, occurs in this charter. Bailiffs.

In the 8th chapter, the officers of the king appeared to be described under the general name of *bailiffs*.

And the same inference arises from the 17th chapter, which speaks of the sheriff, constable, escheator, coroner, and other bailiffs of the king. Cap. 17.

It was declared, by the 18th chapter, that the *sheriff* or *bailiff* should attach the goods of the king's tenant who died indebted to him. Cap. 18.

In the 19th chapter, the *bailiff* of the constable of a castle was mentioned. Cap. 19.

By the 21st chapter, *sheriffs and bailiffs*—to restrain whose oppressions and exactions was a material object of the charter—were prohibited from taking the horses or carts to make carriages, without paying the price limited*—the *bailiffs* were also prohibited from taking the demesne carts of spiritual persons and knights; and the wood of any man for building the king's castles. *Bailiffs* were also mentioned in the 28th chapter, which related to wager of law. Cap. 21
Bailiffs.

To illustrate also the general application of this term, and its correlative "*bailiwick*," it should be observed—that the 14th chapter of the *Carta Forestæ*, calls the place in which the forester was to exercise his *jurisdiction*, "*his bailiwick*;" and the 16th chapter enumerates *bailiffs* amongst the officers who were prohibited from holding pleas of the forests. Bailiwick
Carta
Forestæ.
Cap. 14.

In chapter nine of this confirmation, the provision of the charter of John was repeated—that the city of *London*, should have all the old liberties and customs, *which it hath been* Cap. 9.
London.

* Sax. Ll., and many Charters.

Hen. III. *used to have*; and moreover, that *all other cities, boroughs, towns, and the barons of the five ports, and all other ports*, should have their liberties and free customs.

1244. *Knights* also were repeatedly mentioned in the Great Charter of Henry III.

Disseisin
mort d'-
auncestor. Assises of novel disseisin and mort d'auncestor, were by the 12th chapter directed to be taken in the *shires*, before the justices with the *knights of the shires*.

Cap. 20. In the 20th chapter, directions were given as to the performance of castle-ward by the *knights*.

By the 21st, the king's bailiffs were prohibited from taking the demesne carts (*caretta dominica*), of any *knight*.

Cap. 14. The 14th chapter continued the same distinction of *free-Freemen* men and *lawful men*, which we have noted before,—and also mentions merchants and villains.

It provides that a *free man* (*liber homo*), should not be amerced for a small fault, but after the manner of the fault. A merchant likewise; and a villain. And then *inter alia* proceeds to enact—that none of the said ameracements should be assessed but by the oaths of honest and *lawful men* of the vicinage—"proborum et legalium hominum de visneto."

Lawful men.
Cap. 19. In the 19th chapter, which relates to the purveyance of the castle, boroughs were not mentioned—but merely the town. The men of the town (*de villá*), an expression so frequently occurring in the charters, was here introduced in the most general manner.

We have had frequent occasion to notice the limitation of a *year and a day*—which was adopted for the determination of legal rights from the earliest periods of our history, and which again occurs in this charter.

Cap. 23. The removal of all weirs in the Thames and Medway, was Weirs. provided for—as we have previously seen in the charters of London.

Cap. 25. And so also that there should be one measure throughout the realm, which had been directed by the previous laws of Richard I. and King John.

Cap. 27. We have seen in the charter of John—that *burgage* tenure was referred to with the *socage* tenure; the same occurs again in this chapter.

Merchant strangers appear to have been the objects of Hen. III. protection by our early laws; and also by some of the Cap. 30. grants we have quoted.—The 30th chapter promises, in the Merchant language of some of the charters—that they shall have strangers. free ingress and egress in England, and liberty to tarry and trade there. *

The term *merchants* or *mercatores* seems to be used in a peculiar sense in the 14th chapter of the *Carta Forestæ*, where some of the persons who are to be liable to chimmage, are described as coming—"extra ballivam suam tanquam mercatores;" and they were protected from evil tolls.

By some authors, ancient as well as modern, *prescription* Prescription. has been treated as *adopted* by us from *the civil law*.—*Bracton* so considered it; *—and other writers appear to have implicitly followed him.

It seems probable that the general doctrine might have been borrowed from the Romans.

A man by the Roman law might be free by prescription; † and so he might acquire property in individuals or things, by length of possession or prescription; and the time, in some instances as to moveable property, was one year;—in others as to immoveable property, two. Justinian Justinian. however, altered it to three years for moveable property, and ten for immoveable, if the owner was within the kingdom;—but 20 years if absent. And 30 years' possession was sufficient to establish the right,—even if the possessor had intruded without any title. ‡

u In England—no title could be acquired by prescription against the emperor. ||

Prescription was also used as the ground work of a legal fiction—which was adopted by the Romans for the purpose of trying the title to lands; in some degree resembling the principles of our actions of ejectment for the same purpose. Ejectment. Thus Publicius, the prætor, invented a mode of proceeding, by which the claimant was permitted to state, that he had gained a title to the thing in question by prescription;

* Lib. ii. cap. 22.

† Just. ii. l. 6.

‡ Cod. vii. 39. 3. Imp. Honor.

|| Just. ii. 6, 2, 4.

Hen. III. which legal fiction the possessor was not allowed to dispute, but was to defend his possession on the question of right.*

But even if that position be true, still, most of our law as to prescription is to be traced—particularly with reference to some peculiar matters—to express statutes,

Cap. 35. Thus in the 35th chapter of ~~this charter~~ it was provided, —“ that every man may have his liberties which he had in the time of Henry II.; and the sheriff is to be content with so much as the sheriff was wont to have for his view making, in the time of the same king.”†

By the 37th chapter, *escuage* also was directed to be taken; as it was wont to be in the *time of Henry II.*—reserving to all archbishops, bishops, abbots, priors, templars, hospitallers, earls, barons, and all persons, as well spiritual as temporal—all their free liberties and free customs—which they have had in time past.

Cap. 4. So also by the fourth chapter of the *Carta Forestæ*, the possessors of wards in forests, were secured in the possession of those that had it at the first coronation of *Henry II.* And by chapter five, the ranges were to be made in the same manner as they were at that time.

Cap. 6. By chapter six of that statute, dogs were only to be lawed in the places accustomed at that time.

Cap. 15. So also by the 15th chapter of the same charter, provisions were made as to all outlawries for the forest, *since the time of Henry II.*

Cap. 35. The 35th chapter of Magna Charta also provided,—that
 “ no county court from thenceforth shall be holden, but from
 “ month to month; and when greater time hath been used,
 “ there shall be greater. Nor any sheriff, or his bailiff, shall
 “ keep his *tourn* in the hundred but twice in the year; and no
 “ where but in due place, and accustomed; that is to say—
 “ once after Easter,—and again after the feast of St. Michael.
 “ And the view of frank-pledge shall be likewise at the feast
 “ of St. Michael, without occasion.‡ The view of frank-pledge
 “ shall be so done, that *our peace may be kept*, and that the

Sheriff's
tourn.

Frank-
pledge.

* Just. iv. 6. 4.

† And see before, p. 424. Temp. Joh. Mag. Char.

‡ See Huntingdon Bye Laws.

“ *tithing be wholly kept as it hath been accustomed*; and that Hen. III.
 “ *the sheriff seek no occasions*; and that he be content with
 “ *so much as the sheriff was wont to have for his view*
 “ *making, in the time of King Henry our grandfather.*”

The consequences resulting from land being granted to religious bodies, who were, even at this time, held, by reason of their *succession*, to be perpetual, seems not to have been felt before this period—at least, for the first time we have a provision introduced, preventing alienations, as they were then called, in “mortmain.” It is therefore provided, that Mortmain.
 it shall not be lawful from henceforth, to any to give his lands to *any religious house*, and to take the *same land again* to hold of the same house. Nor shall it be lawful to any house of religion to take the lands of any, and to lease the same to him of whom he received it. If any from henceforth give his lands to any religious house, and thereupon be convict, the gift shall be utterly void, and the land shall accrue to the lord of the fee.

Freeholders also (*liberi tenentes*) were *expressly mentioned* in the last chapter of the Great Charter of 9th Henry III., 1224.
 as one of the *classes of the community*, who granted a fifteenth part of their moveables to the king.

They were also mentioned again, in the same manner, in the *fourth chapter of the Carta Forestæ*; and in the conclusion of that charter, in which the *grant of the fifteenth part* of all their goods, was given by them, and the archbishops, bishops, abbots, priors, earls, barons, and knights.

The Latin term “*manent*,” so often met with in Domesday and the previous documents, occurs in the 2nd chapter of the Carta Forestæ, and requires some comment. Cap. 2. Carta Forestæ.

“*Manent*” seems to have been generally used in legal language to denote *residence*:—thus, in the charter of Hawise, Countess of Gloucester, to Petersfield, the grant is to the *burgesses* “*qui ædificaverunt et manent in burgo.*” Manent.

And by the Carta Forestæ, chapter 2, persons who, according to the translation, “*dwell out of the forest*,” and, by the original Latin, “*manent extra forestam*,” were not to be summoned before the justices of the forest.

Hen. III. In the 7th chapter of the same charter there was a provision,
 Cap. 7. with respect to the foresters, or bedells—which occurred in almost every grant of King John—prohibiting the sheriffs from taking scotale.

1235. In the provisions of Merton, relative to the marriage of
 Statute of heirs, &c., it was directed—that lords who married those they
 Merton. have in ward to villains, or others, as *burgesses* when they
 Burgesses. are disparaged, shall lose their wardship.

This passage is much relied upon by many authors, to show that *burgesses* were a low and inferior grade in society—and they are supposed by some, to be little removed from villains. It however, seems hardly to justify this conclusion—and amounts to nothing more, than “that *burgesses*, though essentially distinguished from villains,” were the lowest grade of freemen: which is very probable—because many of them were those who, unlike freeholders, had become free from villain’s estate, merely by residence for a year and a day in a borough—to which privileged places, we may remember in Glanville, this species of emancipation was confined; and therefore, on this ground, it is very probable, they were esteemed of an inferior grade—but it does not appear that any other inference can properly be drawn from the passage.

Cap. 8. — In the 8th chapter, writs concerning “*natives*” were mentioned.

A statute of the 51st of Henry III., concerning the assise of bread and beer, (so frequently spoken of in the laws from the reign of William I., and in charters at subsequent periods,) mentioned cities and boroughs.

Cornwall. We have observed before, in our comments upon Domesday, that *Cornwall* appeared in a peculiar situation, as no boroughs were alluded to in the return for that shire. It was also specially mentioned in the statute “*de scaccario*,” and excepted from the other counties with respect to wards and escheats:—and the sheriff of Devonshire was expressly directed to keep the king’s wards and escheats in Cornwall. In that statute, many regulations were made respecting the sheriff’s fermers, and bailiffs of franchises, as the king’s

officers. The latter being directed to be answerable to the sheriffs—whose tourns, and inquiries there, were noted. Hen. III.

In the statute of the pillory and tumbrel, allusion was made to the liberty of markets:—but there was no reference to boroughs. Statute of Pillory and Tumbrel.

In the 2nd chapter of the statute of Marlborough, it is provided,—that none shall distrain any to come to his court who is not of his fee, or over whom he has no jurisdiction; nor shall make distresses without his fee, or the place where he has a bailiwick or jurisdiction:—clearly establishing the limited and local nature of jurisdictions. Statute de Marlberge 1267.

In the 7th chapter, the *full county court* was mentioned, as the place where writs were to be openly read. Cap. 7.

We shall have occasion hereafter to quote instances, particularly in the Cinque Ports and Huntingdon, where this term was applied to the court leet of the borough, as it is here to the county court.

The 9th chapter related to the doing suits to the courts of great lords. It was provided, that none who was enfeoffed by deed from thenceforth should be distrained to do such suit to the court of his lord, unless he was specially bound thereto by the form of his deed. Cap. 9.

The 10th chapter, which related to the *sheriff's tourns*, provided, that "*archbishops, bishops, abbots, priors, earls, barons, nor any religious men and women, should need to come thither, except their appearance be specially required thereat for some other cause; but the tourn should be kept as it had been used in the times of the king's noble progenitors. And they that have hundreds of their own to be kept, should not be bound to appear at any such tourns but in the bailiwick where they were dwelling. And the tourns should be kept after the form of the Great Charter, and as they were used in the times of King Richard and King John.*" Cap. 10. Tourns.

Here the doctrines for which we have before contended, that ecclesiastical persons were exempted from the sheriff's tourn and court leet, is expressly recognized; and the place at which the suit was to be done is limited to that in which the individuals *dwell*. Ecclesiastics.

Hen. III. In many of the previous charters, we have seen instances of exemptions from assises and *juries*, and many more will occur in those of subsequent periods.

Cap. 14. The 14th chapter of this statute applied to this subject, and was as follows:—"concerning charters of exemption and liberties, that the purchasers shall not be impanelled in assises, *juries* and inquests, it is provided—that if their oaths be so requisite, that without them justice cannot be ministered, as in great assises, perambulations, and in deeds or writings of covenant when they be named for witnesses, or in attaints, or in other like cases, they shall be compelled to swear; saving to them at another time their foresaid liberty and exemption."

Cap. 20. And the 20th chapter provided, touching essoigns, "that in counties, hundreds, or in court barons, or in other courts, none shall need to swear to warrant his essoign."

Cap. 24. The 24th chapter provided,—“that the justices in eyre shall not amerce townships, because all being 12 years old came not afore the sheriffs and coroners to make inquiries of things pertaining to the crown, so that there come sufficient out of those towns by whom such inquests may be fully made.”

Tourn. This clause probably accounts for the *sheriff's tourn* having fallen into desuetude, as the attendance was confined only to those whose presence was required. But it does not appear to apply to cities, boroughs, or to the court leets, and therefore a full attendance of all persons of the requisite age was still necessary:—which would account for the calling over all the householders, as required at the court leet, and which is still done at many places—as in the instances of the ward-motes in the city of London;—the burgh-motes in Maidstone—Huntingdon—Looe—and other boroughs.

IRELAND.

Ireland. To pursue the statutes of this reign, we should note the "Statutum Hiberniæ," with respect to inheritances in that kingdom, and the course which the justices itinerant were to observe respecting the coparcenary of sisters, for the purpose.

of showing that it was intended at that time that the laws of Hen. III. both countries should be similar. Petitions were received from Ireland requiring to be informed how the law was in England. The English laws were accordingly certified; with directions that the law in Ireland in that respect should be the same as in England.

By the Great Charter for Ireland, it was amongst other things provided, that the *City of Dublin* should have all its *ancient liberties* and *free customs*, and that all other cities towns, *boroughs*, and ports, should have all their liberties and free customs. 1216.

The king made many grants to the city of *Norwich*: and in the 7th year of his reign, he appointed four persons to be *bailiffs* instead of the *provost*.* Norwich.

And subsequently, the charters of Richard and John, as to the trial of novel disseisin, were confirmed.† 1228.

In another period also freedom from arrests. 1255.

In 1256, the king granted to the citizens the return of writs, the exclusion of all sheriffs and bailiffs; and provided,—that all merchants trading there, should be in *scot* and *lot*:—and that no guild or fraternity should be held within the city, to its damage:—an irresistible proof, that guilds were separate from the citizens. 1256.

At this period the king seized *Norwich*, in consequence of disturbances in the city; and it seems, he retained it in his hands for some years. An interdict of the Pope was also fulminated against the citizens; but, upon the additional payment of 400*l.* beyond their former fee-farm rent, the city, with its liberties, was restored. 1267.

In this year, there was a talliage of 120 marks raised upon the town of *Newcastle-upon-Tyne*:‡ and from the documents already cited, relative to that borough, it would seem impossible not to infer, that such talliage was paid by the burghesses generally—that is, all the free inhabitants of the burgh. 1223. Newcastle-upon-Tyne.

* Rot. Cart. 39 Hen. III. m. 4. † Rot. Cart. 13 Hen. III. m. 10.
‡ Carte's Hist. Hen. III. 24, note 4.

Hen. III. In this year, a *seal* was first spoken of, as belonging to the town, though no charter appears to have given the burgesses any express authority to have one.

Seal.
1223.

From this, and a variety of similar instances, it will be seen, that a seal was often adopted without any authority, and used in many places not incorporated;—the fact, therefore, of possessing a common seal, though in modern times one of the *indiciæ* of a corporation, was not so considered in more ancient periods.

1234. There was also a grant to the honest *men* of Newcastle and their *heirs*, of the town at fee-farm; in which the charter and grant of Henry II. were referred to;—as well as the loss of rents by reason of the ditch, and new works made under the castle. And the burgesses were in no wise to be answerable to the sheriff or constable;—that term, no doubt, applying to the constable of the castle.*

1261. The Bishop of Durham was prohibited from citing the *burgesses* of *Newcastle* out of their own borough:†—a direction which would be unreasonable, and almost insensible, if it were not confined to persons inhabiting within it;—it would be likewise as unreasonable, if it did not apply to all the inhabitants, with the legal exceptions we have before explained.

1224. The inhabitants of *Hindon* received a confirmation of their exemption from tolls.

1225. The *men* of *Andover* had also a confirmation of their town, at fee-farm.‡

It must, however, be remarked here, as we have already seen in the former charters of Andover, that there was no mention of the borough or burgesses.

1227. Henry III. granted seven separate charters to London,§ some of which are probably to be accounted for, from the king having seized the liberties of the city into his own hands.

* Rot. Cart. 19 Hen. III. m. 1, pars unica.

† Hutchinson's Durham, vol. i. p. 215.

‡ Rot. Claus. 1 Pet. MS. 48, In. Temp. Lib; Rot. Cart. 12 Hen. III. m. 9.

§ Brady's App. Hist. of England,—Rot. Cart. 11 Hen. III. m. 16.

The first confirms to the citizens and their *heirs*, to hold *hereditarily*, the sheriffwick of London and Middlesex;—that they might make among themselves *sheriffs*, whom they would, with powers to remove them;—to the same effect as the charter of King John. Hen. III.
First
Charter.

Another grant the same day, to the barons of London, that they might choose their *mayor*, with power to remove him, as King John had granted. Second
Charter.

Also a confirmation of the charter for the removal of weirs on the Thames and Medway, like those of Richard I. and John, which we have seen confirmed by Magna Charta. Third
Charter.

The fourth charter was a confirmation, that they might not plead without the walls, including *Portsoken*;—and confirmed the grants of Henry II. and King John, as to the hustings, &c. Fourth
Charter.

About four months afterwards, another charter was given to the archbishops, abbots, priors, earls, barons, knights, freeholders, and all of the county of Middlesex, reciting—that the warren of Staines might be disforested:—that they, their *heirs and successors*, might have all the liberties of warren and forest:—and might till and plough their lands, and cut their woods, without the view of the foresters. Fifth
Charter.

In this charter, the term *successors* occurs, which at first Successors. might raise an inference, that it was at this time used as applicable to the aggregate municipal bodies of cities and boroughs; but upon a more careful consideration it will be seen, that it is further confirmatory of the distinction we have before remarked, between ecclesiastical and municipal bodies.

Had the grant been to the citizens of London alone, this supposed difficulty would have occurred; but as on the contrary, it is a grant to the archbishops, bishops, abbots, priors, *and others*, to the latter of whom, the term *heirs* is applicable,—the word *successors* is introduced with reference to the first enumerated bodies,—to whom it was then properly and exclusively applicable,—thus strikingly confirming the distinction we have before insisted upon.

It is said, that these five charters, obtained within so short a period, were procured by the payment of a fifteenth, upon

Hen. III. all the personal property of the city; which is another strong ground for assuming,—that its privileges were purchased, and intended to be enjoyed, by all the inhabitants or citizens. For if a fifteenth was payable from the personal property of all the *inhabitants* within the city, of which there is no doubt, then it is clear, that the *inhabitants* paid for their charters; and as these are only confirmations, the inference is, that all the charters were, from the commencement, paid for in the same manner.

1237. There was a grant of this date, which recites a covenant, by Richard, Earl of Cornwall, the brother of the king, upon the one part—and the mayor and *commonalty* of the city of London, upon the other. It is said to have been made in the 13th year,—whereby Richard granted, that all mayors and the *commonalty* might hold Queenhithe, at the ferm of 50*l.*; and the earl affixed his seal,—and the mayor and *commonalty*, their common seal. King Henry III. confirmed this covenant, by a charter of this date, in which also the first mention occurs of the *commonalty* of London:—a term, upon which such frequent comments have been made, and from which such important inferences have been drawn, that it is impossible to pass it over in silence—particularly as it is applied to a body of so much consequence, both in ancient and modern times, as the citizens of London.

Common-
alty.

It is a word of the most general import; and has been used in the earliest periods of our history, as applicable to various classes of men.

Thus, an assise of the reign of Henry II., concerning the bearing of arms, speaks of all the burgesses, and the whole *commonalty* of freemen.*

Also the writs which were issued in the 49th of Henry III., for the expenses of the knights of the shire.

The statute of Westminster, 3rd of Edward I., was made by the assent of *all the "commonalty of the realm;"* and it declared, "that the *commonalty* of the realm are bound to "aid the king."

The parliamentary writs which were issued in the 22nd

* Wilk. 333.

of Edward I., required, that the knights should have power Hen. III.
to consent for themselves and the whole *community of the county*:—and those for the election in boroughs directed, that the burgesses should have similar powers, for the *communities* of the citizens and burgesses; and the returns were made in the same form.

The *Articuli super Cartas*, 28th of Edward I., were granted to the whole *commonalty of the realm*—(toute la commune).

In Ryley's *Placita Parliamentaria*,* 33rd of Edward I., there are two petitions by *the community of the county of Cumberland*.

In the same book,† there is a petition from Scotland, stating—that their representatives were elected by the *whole community of the kingdom*.

There is also a petition from the *community of Northumberland*;‡ and petitions from the *community of England*.§

In the 34th of Edward I., an aid was granted to the king for the whole *community of the kingdom*, to make his son a knight.

The statutes of the 15th of Edward III., were made by the assent of the *commonalty of the realm*. That of the 28th of Edward III., directed the coroners to be chosen by the *commons of the county*.

The pardon granted by Edward III., in the 36th year of his reign, speaks both of the *commoners of England* and the commoners of towns.

In the 8th of Henry VI., a statute gave to the inhabitants of Tewkesbury, an action against the *commonalty of the Forest of Dean*.

In many statutes, from the reign of Edward VI. to the close of the reign of Queen Elizabeth, terms were used which are decisive upon this point—for the expressions frequently occur, of *commonalties, corporate or not corporate*. 3Edw. VI.
2 and 3
Ph. and
Mary,
5, 18, 29,
& 43 Eliz.

We find some authors also confirming this view of the subject. Thus throughout the annals of William of Worcester, “communities” are constantly used for the commu-

* Pages 242 and 250. † Page 243. ‡ Page 242. § Pages 246 and 225.

Hen. III. nities of counties—as well as of towns—of the realm, laity,—and ecclesiastics.* And Sir Martin Wright, at the close of his treatise upon Tenures, says, “I cannot help observing, from the language of the old statutes, ‘*la commune*’—‘*tote la commune d’Engleterre*’—‘*le commonaltie*’—‘*tout le commonaltie*’—‘*et communaute de la terre*’—‘*communitas regni*’—‘*commun de tout le royalme*’—‘*common assent*’—‘*common accorde,*’ &c.—how tenacious and fond our ancestors were of the word ‘*commune*’; and that the commons and commonalty of Great Britain, retain and glory in it at this day.”

If Brady’s doctrine be correct, “they retain, and glory in the select bodies of the corporations.” But to negative that inference, a few other instances will suffice:—thus the *commonalty of the county of Cornwall* make a complaint against the tanners.† In the second Institute,‡ a precept is directed to the *commonalty* of the Forest of Dean and the hundreds of B. and W., which was held good for one entire commonalty.§

In Jenkin’s Centuries,|| the bailiffs and *commonalty of Dale* are mentioned, which place *never was* a borough. And to show its use, in a parliamentary sense, we should observe, Yarmouth. that the early returns for *Yarmouth* were by the *communitas*. In 1660, the question being—whether the right of election was in a select number of burgesses—or the burgesses at large,—it was decided by the committee, and agreed to by the House—that the latter had the right.

Reading. In the *Reading* case, in 1716, when the *inhabitants* were decided to have the right of election, returns made “*pro communitate et per communitatem*,” were cited, to prove the *right of the inhabitants*, which was adopted by the committee; and negated that of the freemen of the corporation, whose claim was rejected.

Petersfield. In *Petersfield*, where the right was held to be in the freeholders, there were many returns by the *commonalty*.

East Grinstead. In *East Grinstead* also, when the right was in the inha-

* 2 Hearne’s Lib. Nig. † Pearce’s Stan. Laws, B. 64. ‡ Page 570.
§ 11 Henry VI., Year Book, fol. 47, B. || Page 99.

bitants and burgage holders;—and in Maldon, when it was Hen. III.
in the burgage holders only.

After these various precedents, we conceive it impossible that the exploded error—of this term having a *corporate application*—can any longer be maintained.

There is another feature also of this charter which requires observation. It is said to be made “under the common seal “by the mayor and commonalty,”—the possession of which, as before observed, has undoubtedly been assumed in modern times to be one of the peculiar characteristics of corporations; but it is clear that anciently seals only were adopted and not signatures—as well by individuals as by all aggregate bodies. The sheriff—coroner—and all other public functionaries.—A town or borough would have one for the general body. Nor is this matter of theory alone, as many places are mentioned by Browne Willis,* and other authors, which have never been incorporated, but which still had common seals; for instance, *Bossiney, St. Germain—Honiton—Ashburton—Westminster—Minehead—Petersfield—Newtown—Lymington—Horsham—Midhurst—Lewes—New Shoreham—Heytesbury—Great Bedwin.*

Common
Seal.

An illustration of the doctrine as to seals may be seen in Sir William Jones' Reports,† in which a record of an iter at Windsor is quoted of a Swayn Mote roll, sealed with one seal; and the attorney-general said, “if one of the officers “of the forest put but one seal by the assent of the whole, “it is as good as if every one put his separate seal;” *as in case divers men enter into an obligation, and they all consent to set one seal to it, it is a good obligation of them all.*

In this year the king granted his Great Charter to the mayor and citizens of London, confirming to them the liberties and free customs which they had in the time of King Henry, his grandfather, and by preceding charters, with other confirmations as to the mayor, fee-farm, and acquittance of toll.

1253.

That the Saxon laws were still in use, and practised in the city of London, we may infer from an entry upon the Great

1248.
Saxon
Laws.

* 3 Not. Parl. 13, 11, et seq.

† Page 268.

Hen. III. Roll, in which it appears that the aldermanry of Ralph Sperling was charged 40*s.* for receiving a fugitive.*

1254. In the 39th of Henry III. a jury was summoned from the aldermanry of Lawrence de Forewick.†

1265. In this year, when the writs were issued for the election of certain knights, citizens and burgesses, who were to attend a great council at London—none were directed to the citizens of London—because, from their having sided with the barons, their liberties had been seized into the hands of the crown.‡

Prescription.

Those liberties the city could not obtain again but by a re-grant, which would be within the time of legal memory; and therefore even if London had been a *corporation by prescription*, which we have proved it not to have been, *it could not after this seizure have prescribed to be so.*

1265.
Sixth
Charter.

As a confirmation of that opinion, we find the king, in the 50th year of his reign, by a charter granted at *Northampton*, to the citizens of London, in consideration of 20,000 marks,§ paid as an atonement for their crimes and misdemeanors committed against the queen and the king's brother, then King of the Romans, and the king's son Edward, remitted to them, and their *heirs*, all crimes and trespasses: and that they should enjoy all their rights and liberties as they formerly did. And all the citizens in the prison were to be discharged, except those given as pledges to the king's son Edward.

It will be observed, that this charter was also granted to the citizens and their *heirs*—clearly shewing that there was *no incorporation* at that time, notwithstanding it was subsequent to their use of a common seal.

The next day, the 11th of January, the king granted another charter to the city, whereby the citizens were empowered to traffick with their merchandise, wheresoever they pleased, and that they might abide for their trading wheresoever they would.

This charter, it will be remembered, is like those granted to many other places, and is in conformity with some of the early

* Rot. M. 1 Dor. Mag. Rep.

† Prynne, 30.

‡ 3 Rot. 7 B.

§ Equal to 13,333*l.* 6*s.* 8*d.*

laws, to which we have referred; and the abiding of the Hen. III. citizens in the places to which they went for the purpose of selling their merchandise, is consistent with what we have before observed, and of which we shall hereafter show many instances, of persons mentioned as residing in cities and ^{or} boroughs as *foreigners*; but for the reasons we have so often repeated—if they continued to reside for a year and a day in any other city and borough, they would cease to be citizens of London, and would become citizens of the place in which they so dwelt.

In this year, the king granted a long charter to the citizens of London, and their *heirs*, which stated, he had again received them into his grace and favour, after divers trespasses and forfeitures of them, and their commonalty; for which they had submitted themselves to the king. The charter re-granted the privileges they had before enjoyed, of not pleading without the walls;—the complaints being determined by four or five of the citizens,—with acquittal of murder in the city, portsoken, and battle:—confirming the ancient customs of the city. Free and lawful men were spoken of in the course of this charter. There was also the exemption from forced lodgings—and that they might dwell, wheresoever they came with their merchandises. Freedom from toll—and the hustings. Foreigners and miskenning were mentioned, and forestalling.—Also merchant strangers. There was a special provision, that as to their debts “no person shall be enrolled upon the recognizance of any person, who is not then known, or unless it be manifested concerning his person, by the testimony of six or four *lawful men* who be sufficient to answer.” All these privileges were enumerated with much more particularity and illustration, than they were in the former charters. 1268. Seventh Charter.

In this same year, a writ was directed to the mayor, sheriffs, and whole commonalty of the city, requiring them to swear allegiance in their hustings, or at Paul’s Cross.*

And here it is clear, that this writ must have been intended, to have included, the whole body of the *inhabitants*,

* Lib. de Antiq. A. D. 1270. 179. Hargrave MS. 542. 142. 30.

Hen. III. with the exceptions to which we have before alluded, of religious persons, aliens, foreigners, &c.; for unless the writ was so extensive in its operation, it would in fact, have failed in the object it had in view.

OXFORD.—UNIVERSITY AND CITY.

As the early history of the *University* of Oxford, must necessarily be much interwoven with that of the *borough* and city, it has been thought advisable to take their histories together, and to trace the origin of each from the earliest times,—at least, as far as relates to the subject of our present inquiry.

Minute researches, however, into the original institution of the *University*, which is involved in much obscurity, would be here misplaced, for, as it was not originally a *borough*, and did not, like the borough, anciently return members to Parliament, we could extract little connected with the history of burgesses or their rights, except as far as the peculiar circumstances of the *University*, contrasted with those of the borough, may illustrate its primitive constitution, and throw some light on the nature of other boroughs.

The first trace of the town is to be found, as we have Domesday. seen before, in *Domesday*, where the burgesses and their services due to the king, were frequently mentioned. It therefore was, undoubtedly, a borough by prescription.

Henry II. Henry II. granted by charter, certain lands within the city of Oxford, to Henry of Oxford. And it seems that he also granted considerable privileges to the borough, for in the

John. first year of the reign of King John, there was an entry on the oblatas rolls, that the *burgesses* of Oxford, gave 200 marks for the confirmation of the liberties which they had in the time of Henry II., which were stated to be the same as those of London; and also for having their town *at fee-farm*.

The nature of the liberties of the city of London, as well those granted by William I., as those of Henry I. and Henry II., we have before seen;—and therefore it is clear, that Oxford had, before the time of legal memory, possession of the same extensive privileges which were at that time granted to the city of London. No doubt they continued to be

enjoyed at this period ; for in the fourth year of Edward I. it appears, from an entry in the memoranda of the Exchequer,* that in the reign of Henry III., there was not only a mayor, but also bailiffs. And in the 20th of Edward I. the mayor of Oxford, described as one of the comburgenses of the town, was presented to the king.

Hen. III.
1275.
4 Edw. I.
1292.

Indeed Henry III., in the 13th year of his reign, expressly confirmed to the burgesses and their *heirs*, all their former liberties, customs, laws, and immunities.† That they should have a guild-merchant, with all things belonging to it;—that no person who was not of the guild-merchant, should trade in the city or suburbs;—that the burgesses should be free of toll, passage, &c., with all the liberties which they had been used to have with the citizens of London. That they should have their town at fee-farm; and trade in common in London with the citizens. That they should consult the citizens of London as to any matter that might arise, and abide by what they should adjudge. That they should not plead without the borough; but might discharge themselves, as the citizens of London, because they were all under the same law, custom, and liberty;—also to have toll and them, as they had.

1228.

In the 41st Henry III., the burgesses had a grant of the return of writs.‡

In the 28th year of this reign, we find the grant to the *University* of Oxford which first interfered with the municipal government of the town:—after which it gradually acquired powers materially affecting the original common law jurisdiction of the borough. As the University was subsequently incorporated—and acquired the power of returning members to Parliament—it becomes material to consider the charters minutely, and trace their progress from the commencement to the final establishment of the jurisdiction, and the parliamentary rights now enjoyed.

1244.
University
of
Oxford.

Those, however, of the University, having been printed at

* Maynard's Rep. p. 4. † 2 Hearne. Lib. Nig. p. 819, Rot. Cart. 13 Hen. III. m. 12.
‡ Rot. Cart. 41 Hen. III. m. 6, et m. 7, et MS. In. Temp. Lib.

Hen. III. the Clarendon Press in 1770, and *published by the University, are readily accessible*;*—it is therefore unnecessary to do more than to call the attention of the reader to such parts of them as in any respect affect the present inquiry.

Charter
The first *charter published by the University* is that granted by Henry III. at *Reading*; and with all those before granted to the same body, is stated by *inspeximus* in the general charter of Edward IV.

This is a grant to the chancellor for the quiet of the *University, and of the students* at Oxford. That, as long as it should please the king, in the causes of the clerks, (clericorum) arising out of the taxing, or letting of houses and contracts for horses or victuals, or for other moveable things, **Prohibition** either in the town or suburb of Oxford, the king's *prohibition* should not run—but the causes should be decided before the chancellor of the University of Oxford, notwithstanding any writ of prohibition.

University
The term *University* here used, was probably borrowed from the civil laws, which had been discovered at Amalfi, a little more than a hundred years before; and it is observable, that the body here spoken of, does not resemble *that of burgesses, whose very essence was local*, but it was a society *existing independently of the place*, in which its *members resided*; as at the time this charter was made, the borough was in full possession of the liberties before mentioned both in this reign and the previous charters of King John, *and had the same exclusive jurisdiction* of the place as the citizens of London.

Authority
The power given to the chancellor was only a peculiar authority over the students, who were described as clerici, and probably at that time were ecclesiastics, or at least their attendants;—as no doubt the university was then purely an ecclesiastical establishment.

If therefore, there was at that period any society which might be treated altogether as a *corporation*—and as having no existence but in its corporate character—it was this body

* Registrum Privilegiorum Almæ Universitatis Oxoniensis, 4to. Oxon., 1770; et vide etiam Rot. Cart. Tur. Lond.

of the university;—and yet it was not *incorporated till the reign of Elizabeth*—and then continued for some time without returning members to Parliament, which privilege was not granted to the university till the reign of James I. *Another striking instance that corporations did not exist at this period*—and that the privilege of returning members, was not in right of their being corporations;—the university having been incorporated some time before it returned members to Parliament;—and a subsequent special grant being necessary to give it that power;—placing it, nevertheless, like Cambridge, in the anomalous position of returning members according to the exigency of a writ—which requires citizens and burgesses to be returned from each city and borough;—the university, in fact, being neither the one nor the other.

The king also granted another charter in this year to the university, which was given at *Woodstock*, in the presence of the *proctors for the scholars*, and of the burgesses of the town, by which it was directed—that if any *injury should* be done to the *scholars*, inquisition thereof should be had, as well by the neighbouring villages, as by the *burgesses*. If the *burgesses* should kill, assault, or injure any of the *scholars*, the *commonalty* of the town should be punished, and amerced by themselves;—and if the *bailiffs* should be negligent or guilty of deceit in doing their duty against every offender, they should be punished and amerced by themselves, and not with the *commonalty*.

A clause follows, for limiting the rate of interest to be paid by the scholars to the Jews.

It is also provided, that whenever the mayor and bailiff take the oath of fidelity in their *common place*, the *community* of the town should give notice to the chancellor, that he might be present, if he wished it, either by himself, or by some other persons. And the oath, as far as relates to the *scholars*, was directed to be, “that they should keep the *“liberties and customs of the university.”* Two *aldermen* were to be appointed, as ordained by William of York, to *execute justice* in the absence of the *præfects*, (*præpositi*;)—and it was provided, (in conformity with the common

Hen. III. law,)—that every *burgess of Oxford should answer for his family*;—so that if any one of them should kill or injure any clerk, or any of his own, the same *burgess should produce the malefactor, that justice might be done upon him, according to the custom of the realm.*

It was also directed, that a day's notice of *the trial of bread and beer* should be given to the chancellor and proctors of the university, that they might attend if they pleased.

We have here the early traces of the disputes and jealousies which existed between the *students and the burgesses*. It seems that the *burgesses* had not, in the inquisitions which had been held as to offences against the *scholars*, dealt fairly with them;—and that the latter had, therefore, obtained from the king this charter, requiring that such inquisition should be made by the surrounding villages, as well as by the *burgesses*. Whether they were to be distinct inquisitions, or were to be formed partly of *burgesses, and partly of the villagers*, does not directly appear; but this passage at all events is sufficient to show one fact connected with the *burgesses*,—namely, that their peculiar character as a *privileged class* was entirely local, and that they did not reside in the *neighbouring villages*, otherwise this regulation would have been useless to the scholars.

Residence.

The object of the next provision, that the *commonalty of the town, and the bailiffs, should be amerced separately by themselves*, is not very apparent;—but it may be conjectured, that if the bailiffs were to be amerced with the commonalty, they would be disinclined to enforce a payment to which they were themselves to contribute; and therefore, they were exempted from the common ameracements, and were to be liable only for their neglect in not levying it on others.

The presence of the *chancellor* at the taking of the *oath* by the *mayor and bailiffs*, as well as at the trial of the *bread and beer*, was the first step towards the union of the *ecclesiastical and civil power at Oxford*, which seems to have been further attempted in the next charter.

Aldermen. The *aldermen*, who are here first mentioned, refer to the

civil jurisdiction; and the judicial duty assigned to them is ^{Hen. III.} that which the ancient *Saxon aldermen* executed in the *folc-mote*, and which has since been converted into the modern *corporate officer* of that name.

The next provision, as to the responsibility of every *burgess* ^{Burgesses.} for his family (which, by a subsequent charter, is extended to civil as well as criminal matters), is only declaratory of the *common law*, as found in the early *Saxon laws*, and in *Bracton*, *Britton*, *Fleta* and the *Mirror*: clearly indicating, as observed before, that the *burgesses* were the *housekeepers*, and that they, and not their *inmates*, were responsible to the law;—because the jealousy with which the house of every individual was protected, prevented even the officers of justice, or of civil government, from entering it; and as a substitute for such an intrusion, the law cast the responsibility for all the *inmates* on the ostensible master of the family—the *permanent inhabitant*—the *burgess*.

The term *commonalty* is used in this charter, as it is in the subsequent parliamentary returns, for the borough;— <sup>Com-
monalty.</sup> but it will be seen in a variety of other instances, that it did not at that *period import a corporation*, but was applied *indifferently to the commonalty of the realm*, county, &c. or to the *commonalty of a city or borough*—of which this use of the word affords an illustration:—as we have previously shown, that *the borough of Oxford*, was *not incorporated till a much later period*.

The same king, in the 39th year of his reign, granted also ^{1255.} another charter at *Woodstock*, to the *university of the scholars of Oxford*:—which, for the peace and tranquillity, as well as benefit of the university, provided, that there should be *four aldermen in Oxford*, with whom *eight* of the more discreet and lawful *burgesses* of the *town* should be associated: all of whom should swear fidelity to the king, and should be assisting and advising to the mayor and king's bailiffs—for preserving the king's peace—for keeping the assise of the said town—and for searching out *malefactors, breakers of the peace*, vagabonds at night, and receivers of robbers and

Hen. III. malefactors: and the persons so appointed were to take an oath faithfully to perform all those things.

It was further provided, that in each *parish* of the *town* of *Oxford*, there should be *two men elected* from the more lawful *parishioners*, and sworn,—that every fortnight they should inquire diligently that no suspected person was received as a *guest* in the parish—and if any person had received another for three nights in his house he should be answerable for him.*

There was also a clause against re-grating:—and another directing, that if a layman should inflict any great or enormous injury on a clerk, he should be immediately taken and imprisoned in the castle of *Oxford*, and there detained until he should satisfy the clerk, and that at the will of the chancellor and university. And if the clerk should have been obstinate, and the injury small, then the offender was to be sent to the prison of the town. A corresponding clause relates to injuries inflicted on laymen by the clerks, who for greater offences were to be imprisoned in the castle till the chancellor should demand them; and for smaller, in the prison of the town, until the chancellor should free them.

Regulations as to the *bakers and brewers*—the sale of wine—and the *assise of bread and beer*—were also added. And it was directed, that as often as the trial of bread and beer should be made, the *chancellor of the university*, or somebody deputed on his behalf, should be present, if upon being summoned they should wish to be so;—and if they were not present, and had not been summoned, the trial was to be of no effect.

This charter appears to afford one of the earliest traces of persons appointed to assist the mayor in the *municipal government of the place*.

It has also a *striking peculiarity*—probably arising from its relating to an *ecclesiastical body*—that it adopts the ecclesiastical division into *parishes*; and not that of the *common law into hundreds—boroughs—wards or decennæ*. Whilst

* Ll. Sax.

the provision as to suspected *guests*, and the responsibility Hen. III.
of the *housekeeper* for those who remained beyond the third night—are borrowed altogether from the *common law*. So that it appears to have been the intention of the king, by this charter—to unite the *ecclesiastical jurisdiction* and the *civil government*, as the best means of *governing a community formed of ecclesiastics and laity*. The subsequent provisions as to the *imprisonment of ecclesiastical and lay culprits*, is a strong confirmation of this supposition:—as well as the regulation of the *assise of bread and beer*, which was one of the *functions of the leet*; but with which the chancellor is by this charter directed to interfere.

It is observable throughout this and the subsequent charters, how gradually the *power and jurisdiction* of the *chancellor* was *increased* by the acquisition, from time to time, of the functions of the *mayor and burgesses*. And it is matter of curiosity, if not of utility, to remark, that in a commonalty, circumstanced like this of *Oxford*—where the *ecclesiastics* vied in power, if not also in numbers, with the laity—the custom of our early ancestors of mingling *civil and ecclesiastical jurisdictions* together—as in the joint presidency of the earl and bishop under the Saxon laws—was again adopted with respect to Oxford; as best suited to meet a state of things much resembling the condition of the people in the Saxon period of our history.

W. de
Gulstun!

This charter was in some degree explained by one of a subsequent date in this reign, given by the same king at *Woodstock*, by which he granted to the university, for the tranquillity and benefit of the *masters and scholars*, as well as of the *burgesses and others having houses* in the same town—that for the future all the *houses* of the town of Oxford, *inhabited and to be inhabited by the scholars*, should be retaxed every *five years*, according to the will of taxors, sworn on either part, clerical and lay.

1256.

The word "*taxatio*," used in the former charter; and "*retaxor*" and "*taxator*," in this—appear as applying to the *rent* to be paid for the *houses* by the students,—and not to any tax imposed by the king, or his government.

Hen. III. The description of *burgesses*, and “others, *having houses*,” may be urged—as the expressions occurring in other charters of “*burgesses inhabiting*” have been—to import that there were persons having *houses* who were *not burgesses*—and so far, to negative the supposition, that all the *inhabitant householders* were *burgesses*:—the answer to which is, as given before—that such persons might be either *women, or ecclesiastics, or minors*,—none of whom could be *burgesses*.

1257. Other charters were also granted in this year to the *university*, generally confirming their privileges*—and some doubts having soon arisen upon the construction of the

1262. former charters of the 39th of Henry III., another was given, to explain them—stating, that the oath of the *aldermen* and assistants to the mayor, described as being required by the former, to be taken in the king’s presence, (which however was not the fact, as nothing of that kind is mentioned in it,) might, in case the king was not present, be taken before some other person appointed for that purpose.

1264. It appears, that the king being about to hold a council of the barons at Oxford, and to remain some time, it was thought that the scholars could not continue there in safety—therefore the king issued a writ, (which is printed in Hearne’s *Liber Niger*,† from a book stated to belong to Mr. Astle,) directed to the chancellor and university, reciting the above facts,—and directing, that the scholars should depart from Oxford, till the disturbances then existing were repressed—when they might return and remain in safety, and enjoy all their former privileges—and the contentions between the *scholars* and *burgesses* were attempted to be tranquillized, by charters which the king granted to the *chancellor and university*, on the one hand, and to the *mayor and good men* of the town, on the other.

In the same book, there is also another writ in the same year, reciting the former, and alleging the same facts,—and that peace had been restored and proclaimed between the king and his barons,—and directing, that the *chancellor and university* should return to Oxford, and remain there, and

* MS. In. Temp. Lib.

† See vol. i. p. 465.

enjoy all their former liberties and privileges. That the Hen. III.
mayor and *good men* of Oxford should receive the *chancellor*
 and the *university*, and entreat them well, allowing them to
 enjoy their privileges.

It should be observed, that, in these writs, the term uni-
 versity is not applied to the *place*, but to the *body of the*
scholars and clerks.

In the next year, another charter, containing important 1265.
 exemptions, was conceded to the *clerks studying in the*
university. It stated, that “ as it might be burdensome and
 “ irksome to the clerks who were attending the schools, and
 “ having lay fees, to be placed in assises, juries, and re-
 “ cognizances—the king, at the instance of the *university*,
 “ wishing to show especial favour to them, granted—that
 “ as long as they should there adhere to their studies, and
 “ should make laudable proficiency in their learning, they
 “ should *not be put in any assises, juries, or recognizances.*”
 The effect of which charter, was to *exempt the students from*
the interference of the sheriff or mayer, notwithstanding they
 had *lay fees*: and was a great step towards exempting them
 from temporal jurisdiction. The distinction between eccle-
 siastical and lay fees, as to liabilities and immunities, was
 here expressly recognized.

In the same year, a singular document occurs—reciting
 that, in consequence of the great contention in the town
 of *Cambridge* three years before, some of the students
 there had left the place, and removed themselves to the town
 of Northampton, wishing to establish a university there, to
 which the king had then assented; but now being better
 informed of the matter, and learning that the municipium of
Oxford, anciently founded and confirmed by his progenitors,
 and found convenient for the accommodation of the students,
 would be much injured, he commanded, by the advice of his
 council—that there should be no university in the town of
 Northampton—and that no scholars should be allowed to
 remain there—otherwise than as was accustomed before the
 creation of the university.

And finally, a charter of this date, confirmed to the *scho-* 1268.
lars the liberties granted by the charter of the 32nd of Henry

Hen. III. III., and which was enrolled by the king's orders, in the following year.

UNIVERSITY AND BOROUGH OF CAMBRIDGE.

Cambridge, like Oxford, was a *borough* long before its *University* had acquired any temporal privileges.* The *burgesses* were mentioned at the time of the great survey of William the Conqueror: and the *borough* had privileges granted to it in this reign, and those of Henry II., and King John.

It does not appear that this *university* possessed temporal franchises so soon as *Oxford*: nor until the 50th year of Henry III., when that king, regarding the peace, tranquillity and benefit of *the university of scholars*, granted (as before provided for Oxford), that there should be two *aldermen* of Cambridge, and four of the more discreet and lawful *burgesses* of that town, who should associate themselves with the aldermen, and who should all swear fidelity to the king, and be assisting to the mayor and bailiffs to preserve the king's peace;—to keep assises there;—and to inquire as to all malefactors—disturbers of the peace—night vagabonds—and receivers of robbers. That they should take an oath that they would observe all these things faithfully. That there should be two men chosen in each ward of the town, who should make diligent inquiry lest any suspected person should be received as a *guest* in the town. And if any person should have received such a one for *three nights*, he should answer for him.†

After which, other provisions follow similar in effect to those of Oxford.‡

In the same year it was also granted to the *chancellor*, *scholars*, and their *successors*—that all the *houses* which the scholars should inhabit, should be taxed according to reasonable taxation, by two masters and two bailiffs of the town:—being in substance nearly the same as the charter to the university of Oxford.§

* 1 Pet. MS. 16 B.
‡ 1 Pet. MS. 105 B.

† Ll. Sax.
§ 1 Pet. MS. 106.

There is another document also in the same year, reciting, that because the *bailiffs* and *burgesses* of Cambridge had not only been negligent, but also inefficient in repressing the insolence of malefactors as they ought to have done, whereby the king had been informed, that the masters and scholars had been hindered so that they could not exercise their scholastic acts in the quietude so necessary for study:—the king, desiring to insure the tranquillity and peace of the said masters and scholars, directs—that the sheriff for the time being, whenever the *bailiffs* or *burgesses* were negligent and inefficient to repress the malefactors and disturbers of the peace of the king and university, should, with a sufficient posse of the county, repress these evils whenever they should be required by the university. Hen. III.

A strong measure no doubt on the part of the crown in support of the university—but in strict conformity with the principles of the common law—which required the *sheriff* to take care that the law was fully administered and enforced wheresoever the local authorities should fail in the borough, or privileged place.

In the 54th year of the same reign, the king, by a writ, recites—that because the barons and others exercising tournaments at Cambridge, and frequently flying to arms, many dangers and inconveniences were accustomed to arise, which, if tolerated, might, in process of time, manifestly lead to the destruction of those studying there,—he, willing to provide, as far as he could, for the indemnity of the *masters* and *scholars*—in this respect granted to them, that no tournaments should be made in their town, or within five miles round, under severe penalties.

The king also, by another writ, reciting, that contentions had often arisen between the *masters* and *scholars*, and the *burgesses* of Cambridge,* by reason of which many dangers had threatened, as well the clergy as the people, provided a method for avoiding those dangers, and for preserving the peace, by directing—that in every year, within 15 days of the time in which the masters should have re-

* Rot. Pat. m. 8.

Hen. III. summed the reading of their lectures, five scholars should be chosen out of each county in England, from the most discreet who should be *commorant* there—three from Scotland—two from Wales—three from Ireland—and ten *burgesses*—three from the suburbs and seven from the city, who should be all sworn, &c. If any bad or rebellious scholars, or laity, should be found, who, being first admonished, would not correct themselves, the *burgesses* should swear that they would take them according to this statute and ordinance.

Provision is also made for taking the lists of all those who *keep houses*, who were to swear that they would not knowingly receive any bad person as their *guest*. And all who so received them were to be responsible for them. Those who should rebel against this ordinance, as well laity as clerks, were to be driven out of the *community*. And if the *burgesses* and *clerks* could not put down the disturbance, then it should be reported to the king and his council.

This document then proceeds with matters immaterial for the further elucidation of our present inquiry:—but the above extracts are sufficient to show the nature of the provisions which were here adopted, in analogy to those of *Oxford*, for the purpose of uniting the *ecclesiastical* with the *lay* jurisdiction:—and yet in such a manner as to preserve the principles of the common law, which required that every *householder* should be bound to the due preservation of the peace, and should be responsible for all persons received into his house.

Thus we have seen in this reign the commencement, in Oxford and Cambridge—of a *united lay and ecclesiastical jurisdiction*:—and the foundation of that singular authority, which has been obtained in those places, by the two universities.

1226. In the 11th of Henry III., a fine was paid by the *burgesses*
Bristol. of *Bristol*, for a grant, that a part of the town, called Redcliffe, should answer with the *county* of Somerset.*

The *burgesses* also paid a fine, for having their town at fee-

* Petit's MS. In. Temp. Lib. vol. i. Rot. Cart. 11 Henry III. m. 7.

farm. And they had a grant in this year, confirming that Hen. III.
of Henry II.

The above grant as to Redcliffe, establishes, that it was no part of the city or borough of Bristol, although it was included in the ambit of the town; and therefore being no part of the borough, it was an adjunct of the *county*, and it was liable to the jurisdiction of the *sheriff*. And the burgesses procured by the payment of this fine, a recognition of the liability to the county, and exclusion from the borough.

This, in all probability, arose from some offences committed by the men of Redcliffe, for which the burgesses of Bristol were fearful of being rendered responsible; for we find twenty years afterwards, the *burgesses* were desirous of having this part of their suburb, united with their *borough*; and therefore in the 31st year of Henry III., they procured from that king, the following charter:

That the *burgesses of Redclive*, in the suburb of Bristol, 1247.
should for ever answer with the *burgesses* of Bristol, before the king's justices, when and as the *burgesses* of Bristol did, and not elsewhere, &c.

Considering the manner in which Redcliffe had been previously recognized as *separated from the borough*, and included in the *county*, and is here again added to the borough, it is impossible not to infer that in both instances; the *inhabitants*, and the *inhabitants only*, were the persons affected by those grants: and it would want more than a usual share of credulity, to imagine that they could in any manner be either *non-residents*, or a *selected corporation*, including only a portion of the inhabitants, and excluding the rest.

Henry III. also in this year, confirmed to the burgesses of 1252.
Bristol and their *heirs*, the charter of John, when Earl of Moreton.*

The king also granted to the *burgesses of Bristol*—that 1562.
they and their heirs, *burgesses of the same town*, should be empowered from among themselves, to choose and create a coroner. That they should not forfeit their goods, for the faults of their servants; and that goods of intestates should

* Rot. Cart. 36 Henry III. m. 5.

Hen. III. not be forfeited. That they should have and hold all their liberties and free customs, as quietly and fully as the citizens of *London*, or others of the realm.

This charter grants to the *burgesses* of Bristol, and their *heirs*, that they might elect a coroner from amongst themselves—the object of which was (like the general provisions of *Magna Charta*,) to guard them from the exactions of the officers appointed by the crown. The inference, that the “*burgesses*” were the “*inhabitants*”—and not “*non-resident freeholders*” or “*corporate freemen*,”—is here again supported. Because it would have been absurd, to have appointed a *non-resident* burgess to such an office as that of coroner. Another inference against the freeholders, and in favour of the *inhabitants*, arises from the grant being expressly made to the *burgesses*, and *their heirs, being burgesses of the town*—a qualification which would have been quite unnecessary, had freeholders been entitled to be *burgesses*, because then, *their heirs* would necessarily be so. And the passage strongly imports, that there was some mode by which a *person* would *cease* to be a *burgess*; which, from the general tenor of the charter, may be assumed to be by *non-residence*.

It should also be remembered, that the privileges granted by this charter, were confined to the town and its liberties.

1226.

Bridge-
north

Henry III. also granted to the *burgesses of Bruges*, in the county of Salop,* that no *sheriff* should enter against them; except for the pleas of the crown, and by the *reeve* of the borough.

The king also granted to the *burgesses* and their *heirs*, that they might have a mercatorial *guild*, with a hanse and other customs and liberties to that guild belonging; and that no one, who of that guild should not be, any merchandise in the aforesaid borough should make, within the walls or without, unless by the consent of the same *burgesses*.

Also, that if any other *native* should hold land in the borough, and should be in the aforesaid guild and of the hanse, and in *lot and scot*, with the *burgesses*,† for *one year and one day*, without claim—from thenceforward, he should

* Vide Mag. Char. et Rot. Cart. 11 Henry III. m. 11.

† So Glanville.

not be restored to his lord, but should remain *free* in the same borough. It was also granted to the *burgesses* of Bruges and their heirs, that they should have soc and sac, toll and them, and infangthef; that they should be free, through all the land, of toll, passage, &c. &c., and all other customs. Hen. III.

The charter of Bridgenorth, like many we have seen before in former reigns, exempts the *burgesses* from the interference of the *sheriff*; thus giving them a separate jurisdiction—and a reeve of their own. The privileges were granted to them and their *heirs*; and consequently, negatives the existence, at that time, of any corporation.

It grants a merchant guild *separately* from the other privileges, as we have had frequent occasion to point out before. Adopting the law as to *villains* in Glanville, to which we have before referred — founding their right to be free, upon their *residing* in the town—paying scot and lot, for a year and a day—and being in the guild. When they became free, they would, as a consequence of the law, be entitled, and bound to be *burgesses*; by being sworn, and enrolled at the court leet, as residents in the borough. How the trading in the guild for more than a year and a day, was evidence of a person being free, has been previously explained.

In the 11th year of this reign, there was a charter granted by King Henry to the church of *Salisbury*,* reciting the translation of the church, from the *castle* to a lower situation; and that the first stone of it had been laid. The *bishop*, and his *successors*, were to have all the liberties which they had by the charters of the king's ancestors. And the king further granted, that the place which was called *New Salisbury*, should be a free city; that the citizens *dwelling there*, should be free of toll and other customs; and have all other liberties, like those of Winchester. Provision is made for fortifying the town; but the citizens are prohibited from giving, selling, or mortgaging their *burgages* to any religious persons, without the consent of the bishop, who was enabled to take a talliage, or reasonable aid, when the king made a talliage in his demesne. Provision was also made, with respect to 1226.
Salisbury.

* Rot. Cart. 11 Henry III. m. 15.

Hen. III. ways, bridges, and merchants; and markets were also granted to the *bishop* and his *successors*.

This charter requires observation, as it fixes the period when New Sarum was first founded. It also shews what privileges were granted to it, at the time of its creation. There is no pretence for saying, that it was either a city or borough before this period. It was not mentioned in Domesday; and we have the date of its foundation, which, being within the time of legal memory, there can be no grounds for asserting, that it was a *corporation by prescription*.

It should be remarked, as a confirmation of the term "successors" being applied at that period only to ecclesiastical bodies, and not to citizens or burgesses—that the numerous other charters which were granted in this reign, were all made to the *burgesses* and their *heirs*; but this being to the *bishop*, is to him and his *successors*, which term occurs repeatedly throughout the charter.

The city was to be free, with all the privileges of that of *Winchester*; and was, therefore, to be *exempt from shires and hundreds*, and to have an *exclusive jurisdiction separate from the county*. The *burgages* of the citizens were also mentioned.

It is a striking circumstance, strongly illustrative of the irregularity and anomalous nature of the notions which have been entertained, with respect to the effect of ancient charters, that the two places of Old and New Sarum, are so directly opposed to each other, on the two important points of *burgage* tenure and corporate rights. We have seen in the reign of King John, that a charter was granted to the burgesses of Salisbury (which, as New Sarum was not then created, could only have been Old Sarum), granting them a mercatorial *guild*, which is said, by Brady and others, to create a corporation:—and yet, there is no trace of any ever having existed in Old Sarum, but the *burgesses* were always considered to be the *burgage tenants*.

On the contrary, in New Sarum there was no grant of a mercatorial guild; but the *burgages* of the burgesses were mentioned. Yet, the *burgess-ship* there has never been con-

sidered to be connected with *burgage tenure*—but has been supposed to be connected with the *corporation*. Hen. III.

There were also granted in this reign, charters to the following places.

To the burgesses of *Bedford* and their *heirs*, their town at fee-farm.* Bedford.

A writ to the justices itinerant, ordering that the *citizens* of *Bath* should enjoy their liberties, which they had anciently enjoyed; † and also a confirmation of the charter of Richard I. Bath.
1257.

In the 40th of Henry III., another charter was granted to the *citizens* of *Bath* and their *heirs*, that they might have return of writs, and that no sheriff or bailiff should interfere with them.—That they might choose coroners from amongst themselves;—and provision is made as to those who die testate or intestate,—and that the citizens might hold their liberties as the city of London, or any others. 1256.
Bath.

Which charter was confirmed by Edward I., Edward II., Edward III., Richard II., Henry IV., and Henry V.

The *freemen* of *Kingston-upon-Thames* and their *heirs* received a charter, that neither they nor their goods should be arrested for any debt, in which they were not sureties or principal debtors;—to have an eight days' fair—the return of all writs—a guild-merchant, as the men of Guildford—and that the men of the town might create coroners, &c. 1266.
Kingston-upon-Thames.

A charter, confirmed the grant by King John to the *burgesses* of *Shrewsbury* and their *heirs*, of the town and hundred at fee-farm:—and added that the men of the hundred, who were in *lot and scot* with the *burgesses*, might be participators with them in aids and talliages. And that they might hold places in the borough, and have the toll of Welshmen, &c. ‡ 1227.
Shrewsbury.

Another charter to the same place, protecting their goods from arrest of debt, was granted to the *burgesses* and their *heirs*. 1255.

Also one in the 49th year, by which the *burgesses* and their *heirs* were to be quit of murage, &c.; in consideration of the faith they had shown to the king and his son Edward, during the disturbances which had recently occurred in England. 1264.

* 1 Pet. MS. 64, In. Temp. Lib. † Rot. Claus. m. 11. 1 Pet. MS. 77 B.
‡ Rot. Cart. 11 Henry III. m. 13 and 16.

- Hen. III. The Abbot of *St. Edmund's-Bury* received a charter, confirming one of King John, when Earl of Moreton.
- Bury St. Edmund's 1226. And in the 50th Henry III., keepers were appointed for the gates of *St. Edmund's*; and an alderman to keep the town.
1265. Alderman. There is in this year, a charter of confirmation to the
1227. Cambridge. *burgesses of Cambridge* of the guild-merchant; that they should not plead without the walls; that the *burgesses* of the merchant guild might be free of toll, saving the liberties of the city of London. The *præpositus* of Cambridge is mentioned, and all the liberties usually granted in charters of this reign.
- Andover. The privileges from Henry II. to the men of *Andover* were confirmed.
- Liverpool. A charter to *Liverpool*, making it a free borough—giving a mercatorial guild—soc—sac—toll—them—&c.; is granted to the *burgesses* and their *heirs*, with other privileges.
- Liskeard. Richard, King of the Romans, brother to Henry III., and who was created Earl of Cornwall in the 15th year of that reign,* made the borough of *Liskeard* a free borough—and granted the *burgesses* all the liberties which he had before given to his *burgesses* of *Launceston* and *Helston*.
- This was about 10 years after the date of the charter to *Launceston*. And it was confirmed by Edmund, Earl of Cornwall, the son of Richard—to the *burgesses* and their *heirs*.
1229. Dunwich. A confirmation of the charters of King John was granted to the *burgesses* of *Dunwich* and their heirs.
1255. And another in this year to the same place, giving to the *burgesses* and their *heirs* the return of writs. The bailiffs to answer at the Exchequer, and excluding the sheriff from interference. The *burgesses* were to elect coroners from amongst themselves.
1268. *Dunwich* was seized into the king's hands, because the bailiffs were not at the account of the sheriff, to answer for the fee-farm.†
- Two years afterwards, the custody of the town was delivered to Philip de Buckland, who having received the profits of it, his lands were ordered to be seized for them.‡

* 2 Bro. Wil.

† Rot. 6, Mad. Fir. Bur. 154.

‡ Mem. Scac. 1 Year Book, Hil. T. 2 Edw. I.

In the 56th Henry III. there was a record,* in which eight *good and lawful men* of the town of *Dunwich*, and eight *good and lawful men* of the neighbourhood, were to be summoned as a *jury*. The eight good and lawful men of the neighbourhood, must have meant men of *free condition*, actually *dwelling* there:—and if that is so, with respect to those eight men, why should not the same term have a similar meaning with reference to the *men* of *Dunwich*? in which case they would in fact, describe the *burgesses* of *Dunwich*, as *the men of free condition, inhabiting there*.

Hen. III.
1272.
Dunwich.

In this year, there was a confirmation to *Nottingham*,† of the charters to the *burgesses* and their *heirs*, and a grant of the tronage of merchandise, as accustomed to be taken in other boroughs and cities throughout England: also that they might have coroners of themselves. And the *burgesses* and their *heirs*, should have protection of their goods from arrest, and the return of writs: with a confirmation of the charters of King John.

1230.
Notting-
ham.

The *burgesses* of *Beverley*‡ received a grant, that they and their *heirs*, *burgesses of Beverley*, should have their goods free from arrest; unless the debtor happened to be of their *commonalty*, and *within their jurisdiction*.

Beverley.

A decisive declaration that the whole of their rights and liabilities were confined, as law and reason would point out, to the limits of their jurisdiction.

The citizens of *Canterbury* and their *heirs* received a charter,§ granting the city at fee-farm, with power to elect bailiffs of themselves; and another charter, confirming that of Henry I.||

Canterbury
1234.

1256.

A grant by the king, to Richard his brother, of the manor of *Knaresborough*,¶ with the castle and manor of the town: a form of charter which should be noted, as not mentioning either the *burgesses* or the borough, but the castle.—The probability is, that at that time, it was not a borough.

Knaresbo-
rough.
1234.

The king confirmed an agreement, made between the *burgesses* of *Wycomb*,** and Allan Basset, who was lord of the

Wycomb.
1236.

* Rot. 6 B.

† Rot. Cart. 14 Hen. III. m. 11, pars 1.

‡ Rot. Cart. 21 Hen. III. m. 3, pars unica. § 1 Pet. MS. In. Temp. Lib. 94.

|| 1 Pet. MS. 95.

¶ Rot. Cart. 13 Hen. III. m. 12, et 2 Pet. MS.

** Rot. Cart. 13 Hen. III. m. 8, et vide etiam, Rot. Cart. 21 Hen. III. m. 3.

Hen. III. place, by which the right of the *burgesses* to the whole borough, with the rents, markets, and fairs, was recognized, and the burgesses, for them and their *heirs*, remitted the claim they had made: Adam Waldesk, and 26 other burgesses, appearing in court, and witnessing that all the others had concurred in the agreement.

Plympton.
1242. Baldwin de Redvers, Earl of Devon, granted to the *burgesses of Plympton*, the borough, with fairs, markets, and all the appurtenances, to them and their *heirs*: with all the liberties which the citizens of Exeter had, "except his *natives*;" who if they happen to dwell in the borough, should be able to claim no liberty thereby, without his assent.

The *burgages* were mentioned in this charter.

The special provision respecting the *natives*, the reader will perceive, without further comment, to be a proof of the law, as stated in Glanville and Bracton, being recognized as in practice upon this point.

York.
1252.

Inspeximus of the charters of Richard I., and King John,* to York: with a confirmation of them, and protections against the severity of the forest laws;—and the exclusion of the sheriff.

1256.

Another charter recited, "that the *citizens* should not be "sued without the city, and that they were not to be convicted by any *foreigners*. They were not to answer for any "land, or tenement within the city, but in their guildhall: "—with the other usual liberties." Reference was made to the *commonalty*:—they were to be free of murage, and forced lodgings; and *all that dwell in the city*, and suburbs of the same, occupying the merchandise, and *willing to enjoy the liberties* (like the words of the Cinque Port charters,) should contribute in talliages, contributions, and other common charges, happening unto the whole *commonalty*. They were to have the assise of bread, and a clerk of the market.

Shaftesbury.
1252.

The burgesses of *Shaftesbury*† received a grant, that the justices of Eyre, should come there to try causes—and that they should have of themselves, two coroners.

* Rot. Cart. 36 Hen. III. m. 19.

† Rot. Cart. 37 Hen. III. m. 9.

This was confirmed by Richard II., Henry VI., and afterwards by Parliament. Hen. III.

The *burgesses of Derby*,* had a charter to protect their goods from arrest—to have *return of writs*—and that they may elect coroners from amongst themselves. 1256.
Derby.

Cambridge and Yarmouth had similar privileges.

The mayor of *Northampton* acknowledged in this reign, Northampton. that the town always had the *return of writs*, but for which, they could show no authority. † The sheriff of Northampton stated, that he had found them in possession of the *tourn*. The mayor, bailiffs, and *twelve of the better and more discreet men* of Northampton, were summoned to answer the king, for all the town; wherefore they did not permit the sheriff to enter the town, to distrain for the debts of the king, and by what warrant they executed the return of writs.

From this document it appears that Northampton, in consequence of the supposed right to have the *return of writs*, excluded the *sheriff* and his *tourn* from the borough, claiming an *exclusive jurisdiction* for themselves:—which, as we have observed before, was the chief end, object, and effect, of the charters granted to the boroughs.

A grant to the *honest men of Oxford* and their *heirs*, of the town of Oxford, with the mill and marsh at fee-farm; saving to the *king* the *castle*. That they should not plead without the town—that they might have a merchant guild—that they and their *heirs* might be quit of toll—and that no *sheriff* should intromit. Oxford.
1256.

A charter that the *burgesses of Ipswich* ‡ and their *heirs* might have the *return of writs*; that no *sheriff* should intromit; and that they might elect coroners from amongst themselves. Ipswich.
1256.

This king granted to the *men of Portsmouth* § and their heirs, that they should have a *guild-merchant*, with all the liberties to a guild pertaining; that they nor their *goods* should be arrested for any debt for which they were not. Portsmouth.
1256.

* Mad. Fir. Bur. p. 9.

† Mad. Fir. Bur. 159.

‡ 1 Pet. MS. 284.

§ Rot. Cart. 15 Hen. III. m. 4, pars secunda.

Hen. III. *sureties or principal debtors*, and all their laws and customs under former kings were confirmed.

Merchant
Guilds.

There were many grants of merchant guilds, particularly during the reign of King John: and it has been observed, that those grants speak of the guild-merchant as a separate and distinct thing from the borough. Here it is most clearly obvious that it was so:—because it has been before seen—that Portsmouth was a borough in the reign of Richard I.; and that privileges and exemptions were granted to the burgesses in that and the succeeding reigns, long before they had any guild-merchant; and by the above charter the guild-merchant is given as a distinct and separate thing.

Guildford. This king granted to the *good men of Guildford* and their *heirs*, that the county court of Surrey should for ever be held in the town of Guildford; and that the justices itinerant should hold the pleas of the county, and assises of all the county in that town. And that the *men* of Guildford and their *heirs*, should for ever have these liberties.

1260.
Retford.

A grant of a fair to the burgesses of *Retford** and their *heirs*, with the ordinary provision, that those who *dwelt* in the town should contribute with the burgesses.

Worcester
1261.

This king granted to the *citizens* of *Worcester*,—that two bailiffs, two *aldermen*, two chamberlains, and 48 assistants, should have the government of the town, with *return of writs*, and power to hold pleas: and that *no sheriff* should intromit.

Hythe.
1260.

A charter of this date is granted to the *barons* and good *men* of *Hythe*†—that they and their *heirs* should for ever have one fair at Hythe every year. Unless the said fair be to the nuisance of the neighbouring fair; so also, that in such fair, no toll, stallage, or any other custom, should be taken from any persons resorting there for their goods or merchandises whatsoever.

Rochester.
1256.

A grant to the *citizens* of *Rochester* and their *heirs*,‡ of the city, at fee-farm, with a guild-merchant; that *no sheriff* shall intromit; and that they shall not be sued without the walls:—with the other usual provisions. That the *port-*

* Rot. Cart. 44 Hen. III. m. 4. † Pet. MS. 219. ‡ Rot. Cart. 45 Hen. III. m. 2.
† Rot. Cart. 12 Hen. III. m. 13.

mote shall be held every 15 days. The *reeves* are mentioned, Hen. III. and freedom from brid-tole.

A charter of confirmation to the *burgesses* of *Coventry*,* Coventry, 1268. confirming all the liberties granted by the earls of Chester; and that they should hold in *free burgage*, and have the same laws and customs as the citizens of Lincoln.

A writ of certiorari of this date, was directed by the king to his treasurer, reciting the grant of former privileges and liberties by his predecessors, to the prior and convent of the church of *Coventry*; with a confirmation of the former charters, and grants of new privileges; and amongst them— that they shall have coroners from the *men* of the town, to answer to the justices in eyre. Prior and Convent. Coroners.

That the *men* of the prior and convent shall have in the same town a *guild-merchant*, with all the liberties which belong to the said guild. Guild-Merchant.

And they further recite, that the king had heard that certain of the *town*, to the injury of the *prior and convent*, had prevented the coroner from seeing the body of a man killed in the said town;—and that the *men* of the *town* could not have their guild.

Upon the complaint of the prior and convent, the king commanded that the *sheriff* should go to the town to publish and procure the said liberties. And some of the town, with others of those parts, with armed force, took the clerk of the sheriff who was sent there and imprisoned him; and broke the writs and rolls, and beat the men of the prior and convent, and ill-treated them, in contempt of the king and against his peace. And the writ directs that the same should be inquired into.†

The above charter of the 52nd of Henry III. directed— that the *burgesses* of *Coventry* should hold in *free burgage*. Free Burgage. Yet that right has never prevailed in Coventry; but on the contrary, like many other places, it has assumed the supposed corporate character of freedom by birth and apprenticeship. There is a grant of a guild-merchant to the prior and convent, who cannot be supposed to have had

* Rot. Cart. 53 Hen. III. m. 11. † Petit's MS. Charters, In. Temp. Lib. vol. i. p. 1.

Hen. III. any right to assume the characteristics of a borough:—and, therefore, this is another decisive instance that such a grant was not connected with borough privileges.

Bodmin. Richard, Earl of Cornwall, granted a similar charter to the prior and canons of *Bodmin*, giving them a merchant guild in that town. And that the *burgesses* should be free of customs.*

Lostwithiel
Tintajoil,
Penknek. The same earl made *Lostwithiel*, *Tintajoil*, and *Penknek* free boroughs, and that they should have merchant guilds.†

Gloucester. There was also a charter of confirmation to the *burgesses* of *Gloucester*, of all the customs of the citizens of London and of Winchester, in the time of King Henry II.‡

Sandwich. And to the *men* of *Sandwich*, a confirmation of their rights which they had in the time of King William and Henry II.

Penryn. *Penryn* was also made a borough in this reign.

Exeter. The citizens of *Exeter* received a confirmation of their previous charters, from Henry I. Henry II. and King John.

Wallingford. And to the borough of *Wallingford*, a confirmation of their previous charters was given.§

In this, as in former reigns, we find many places not boroughs paying talliages ;|| and there is an entry of a payment for the land of an individual, without the mention of its being in any borough or town.

Charters of confirmation and otherwise, were in this reign, granted to, amongst other places,

Hereford,	Reading,
Lynn,	Teignmouth,
Marlborough,	Preston,
Kingston-upon-Thames,	Warwick,
Monmouth,	Carlisle,
Scarborough,	Petersfield,
Newcastle-under-Lyne,	Rye,
Chippenham,	Corfe,
Huntingdon,	Southampton,

* Brady, 96. † Brady, 96. ‡ Rot. Cart. 11 Hen. III. m. 10.
§ Rot. Cart. 51 Hen. III. m. 9. || Mad. Fir. Bur. 51.

Worcester,	Wells,
Wigton,	Appleby,
Stafford,	Dartmouth,
Wendover,	Milbourn,
Camelford,	Devizes,
Grimsby,	Calne,
Weymouth,	Lancaster,
Oxford,	Peterborough,
Cricklade,	Winchester,
Wilton,	Wigorn.

Hen. III.

IRELAND.

Besides these numerous charters to English boroughs, we shall quote several in the same reign, granted to Ireland; amongst which occurs the following to *Waterford*,*—

Commanding, that no persons should have freedom of toll or other customs in *Waterford*, on account of the lands which they held there, unless they be *levant and couchant* in the town of *Waterford*, and *at scot and lot* with the *burgesses* there *residing*.

Waterford.
1221.

This charter is decisive to show, that the law was the same in Ireland as in England—that none could enjoy the liberties of the place, unless they were *actually resident* there, and paid *scot and lot*. And the expression of "*levant and couchant*," will be found to be the same terms used in Bracton, for the purpose of describing the actual *residence* of the villains of the lords.

Another charter was also granted by this king to *Waterford*, in the 16th year of his reign:—whereby he gave to the citizens and their *heirs*, the city at fee-farm.† That they should not plead without the walls;—that they and their *heirs* should be quit of murder;—that no citizen should make duel, but might purge himself by the oaths of 24 lawful men;—that no forced lodgings should be taken within the city;—freedom from toll, lastage, &c.;—that they should be amerced according to the law of the hundred;—have assise of bread and ale;—that the hundred should be holden once a week;—

1231.

* Rot. Claus. 6 Hen. III. m. 6.

† Rot. Cart. 16 Hen. III. m. 7.

Hen. III. and that there should be no miskennen. The *reeve* of the city is mentioned several times; and the provision as to selling wine by retail, as in the charter of Dublin, was introduced. No stranger merchant should remain in the city longer than 40 days, unless by the will of the citizens. That they might marry their sons, daughters, &c. That they might have their reasonable guilds, as the burgesses of Bristol. And their lands might be disposed of, by the *common assent* of the citizens; to be held in *free burgage*. No templars or hospitallers were to be exempt from the common customs of the city.

It then refers to the charter of King John, with respect to those who had lands without the walls, who were to answer for their lands as others; and to do the common customs of the same city, as other citizens; and, in conclusion, the privileges were granted to them and their *heirs*.

1225.
1270.
New Ross.

Roger Bigod, Earl of Norfolk, Marshal of England, granted that the burgesses of *Ross* should have all the freedom of *Banna, Kilkenny, and Wexford*; with the usual provision against merchant strangers selling by retail, or having a tavern of wines, except in a ship, unless they were of *scot and lot* with the *burgesses* of the town. And no *merchant stranger* should buy within the borough of a *strange man merchandise*; but only of the said burgesses, unless he should be of *scot and lot with the burgesses*.

So also, no foreign merchant should remain in the town of Ross, but for *forty days*; and if he should wish to delay longer, he should only remain by the consent of the *commonalty* of the borough, to the profit of the town.

He also granted that the burgesses should be able to make burgesses, if their tenements be 20 feet, so that they might have common liberty with the other burgesses.

Also, that the burgesses and their *heirs*, might hold freely and quietly for ever their burgages with the appurtenances, for the rent, which had been fixed to be 12*d.* yearly.

1225.
Dublin.

By a record of this date,* between the Archbishop of Dub-

* Lib. Nig.

lin, and the citizens, with the *common consent*, it was decided, Hen. III. that the men of the bishop, and his clerks *dwelling* in their lands, who are, and *wish to be participators** of the liberties of the city, should be tallied to every defence of the liberty of the city, and for its support with the citizens themselves:—so also that they should pay aid with the citizens, when any talliage or aid was made by order of the king.

This king confirmed all previous charters:—but changed 1228. the name of the chief officer of the city, from *portreeve* to *mayor*.†

The king also granted to the *burgesses of Drogheda*, that Drogheda. 1229. it should be a *free borough* for ever. That the burgesses should have a guild-merchant, with the hanse, and other liberties and free customs, to that guild belonging: and that *nobody who was not of that guild should merchandise* in the borough, unless at the will of the burgesses.—He also granted to the burgesses and *their heirs*, that they might have soc and sac, toll and them, and infangthef; and that they might be free of toll, lastage, &c. That none of them should plead without the hundred of the borough, concerning any plea, except foreign tenures. That they might be quit of murder and duels. That no person should make hostel within the borough. And that right should be done to them, as to all their lands, *according to the custom of the borough*.

The charter also makes the usual provisions as to bail and trade; and provides, that the hundred should be held at Drogheda, once in every 15 days.

Also, that they should make provosts from themselves, annually, whomsoever they would. That the *common council* of the burgesses should elect two of the more lawful and discreet men, to elect two persons to hold pleas of the crown.

The fishery was also granted to them, as they had been accustomed to have. And that no foreign merchant should sell cloth or wine by retail, but only in gross.

The king confirms all privileges enjoyed in the times of his predecessors, with the borough at fee-farm, for 60 marks annually.

* So Cinque Port Charters.

† Rot. Cart. 13 Hen. III. m. 5.

Hen. III. And also provided, that no *stranger* should take victuals from the port of Drogheda, unless by the will of the burgesses and their HEIRS.

It will be impossible for the reader not to perceive the direct similarity between this charter, and those granted to the English boroughs, in this, and the preceding reigns.

1228. The former charter to Drogheda, and all the privileges, are confirmed to the burgesses and their *heirs*, with a fair.

Cork. 1241. There was a confirmation of this date to the citizens of *Cork*, and their *heirs*, that they might have the city at fee-farm, with prisages of wines, &c.; that they should not plead without the walls, nor anywhere but in their guildhall;* and that they and their *heirs* might be free of murder; that they should not make duel, but might purge themselves by the oaths of 24 lawful men of the city; that there should be no forced lodgings; that they should be free of toll, &c.; and that they should not be amerced, but according to the law of the hundred. That the hundred be kept once a week, with the usual provisions as to debts—pledges—and foreign merchants, who were not to remain there more than 40 *days*. Also the usual provisions as to wills and intestates, and the marriages of sons, daughters and widows. That they might have their reasonable guilds, as the burgesses of Bristol. Their lands were to be held in *free burgage*, that is to say, *by the service of land-gable*. That there should be only one templar or hospitaller within the city. And the charter of King John was confirmed.

The Earl of Pembroke also granted in this reign, to the Kilkenny. burgesses of *Kilkenny*, that they should hold in peace their *burgages*, which they held *without claim for a year*.

Considering the adoption of the material clauses of Magna Charta in Ireland—the similarity of the charters of that country with those of England—particularly the express reference to the customs and charters of Bristol—it is impossible not to arrive at the conclusion, that the *boroughs* in Ireland were of the same description as those

* Rot. Cart. 26 Hen. III. m. 5.

in England; and that the *burgesses* were of the same class, Hen. III.
and subject to the same laws and regulations.

WALES.

There were also charters during this reign granted to the boroughs in Wales:—and amongst them one to the borough of *Montgomery*.

That it should be a free borough, and that it might be inclosed with a ditch; that there might be a mercatorial guild, and that no person should trade in the borough unless of the guild. And grants to the burgesses and their *heirs*, that if the *native* of any man should dwell in the borough, holding land there, and be in the guild, and in *scot and lot* with the burgesses for *a year and a day*, then his lord should not claim him, but he should *dwell free* in the said borough:—which, though varying a little in words from the passage in Glanville, is in substance the same. And they were also granted the same customs as of the city of Hereford. 1226.

There is a grant to the burgesses of *Kardigan* and their *heirs*, that they may be free of custom and toll.* Cardigan.
1229.

And one similar to the burgesses of *Carmarthen*, and their *heirs*.† Car-
marthen.

Chester, in this reign, received charters of confirmations of their previous liberties. Chester.

SCOTLAND.

Alexander II. granted a second charter to his *burgesses* of *Inverness*, granting them *Markynch* at fee-farm. 1236.

This is only material as a confirmation of the previous charter of Inverness, as showing that the Scotch boroughs continued in the same state as they were before.

BRITTON.

Britton, who wrote in this reign, and whose work was published by order of the king, is described by Lord Coke as singularly learned, and of great and profound judgment in the *common law*. 1262.

* Rot. Cart. 14 Hen. III. m. 10.

† Rot. Cart. 41 Hen. III. m. 9.

- Hen. III. This treatise contains most of the provisions of the *Saxa laws* to which we have referred; and in that part of it relative to pleas of the crown (which has been translated by
- Sec. 10. Kelham), in the 10th section, p. 6, we find mention made of
- Sec. 20. the franchises granted in fee-farm. And in the 20th section relating to counties, hundreds, and courts of freeholders, it is directed that the courts should be held by the suitors; and the like in *cities, boroughs* and franchises, and in the courts of the sheriff, or in *view of frank-pledge*, or in other courts.
- Sec. 3. The next chapter relates to the duties of coroners; and the third section speaks of the *view of frank-pledge*, and the inquest there.
- Sec. 9. The 9th section relates to *villains* and *freemen*.
- Cap. 2. Chapter 2, relative to eyres, speaks of *cities and boroughs*; of the provost or præpositus of vills, and of the franchises they claim. The *sheriff* is directed to seize all such franchises as are not claimed, and those who claim them are to show by what authority they do so.
- Sec. 8. The 8th section says, that the articles are to be read and delivered to every *dozeyn*, that is, to the inquest of each bailiwick or hundred, upon which the *dozeyns* are to make their presentments in writing.
- Cap. 12. The 12th chapter relates to *outlaws* (of which Lord Coke says,* our author treats most excellently); and the second
- Decenna. section states, "because it is necessary every one should know
 " the danger of receiving such persons, our will is, that all
 " who are of the age of 14 years, or upwards, take an oath
 " to us, that they will neither be felons, nor assenting to
 " felons; and let every one be in some *decenna*, and pledged
 " by others of the same *decenna*, except the religious, clerks,
 " knights, and their eldest sons, and women. Let the con-
 " dition of the pledge be this; that if those they have
 " pledged are not *amenable to justice in our court when*
 " *required*, both the *decenners* and *decenna* shall be in our
 " mercy. With regard to clerks, knights and women, our
 " pleasure is, that the *head of every family* be answerable for

* 3 Inst. 213.

“ all his chief domestics, and that they answer for those
“ under them.” Hen. III.

And the 3d section provides, “ as to *hosts*, let every one
“ answer for such *guests* as he harboured more than two Sec. 3.
“ nights together,” so that the first night the stranger be
“ deemed an ‘unkouth,’ the second night a ‘guest,’ and
“ the third night ‘hoghenhine.’”

The 4th section provides, that for the due maintaining of Sec. 4.
peace, whenever a felony is committed, every body be ready
to pursue and oust the felons, according to the Statute of
Winchester, with hue and cry, from town to town.

Every one who flies shall forfeit his chattel, notwithstanding Sec. 5.
ing he be afterwards acquitted of the principal fact—which is
the ground upon which, till of late years, the jury were
always charged with the fact of flight, as well as with the
issue of guilty or not guilty.

The 6th section provides, that if there be a murder, or Sec. 6.
other felony concerning the death of man, the felony was to
be presented at the next county by one or more vills.

Women are stated, as in Bracton, to be waived—not to
be outlawed—because they are not sworn into any decenna,
or to the law.

Outlaws, as they will not be amenable to the law, are Sec. 8.
to be forejudged from all law, and put out of the peace;
and all who knowingly receive them, or keep them com-
pany, are to be looked upon as felons. For even the killing
of outlaws was allowed.

Before we quit this chapter relative to the *decenna*, it Decenna.
would be proper to observe, that this system has been the
frequent subject of encomium by our greatest lawyers.*

In the 15th chapter, larcenies are directed to be tried in Cap. 15.
the court of the lord of the fee, if he has the franchise of
infangthef, or in the hundred or county, or other proper
court. But if the offence was committed without the lord’s
jurisdiction, or if the lords have not sufficient suitors to take
the inquest, then such felons should be forthwith sent to the
county gaol. A direct confirmation of the doctrine we have

* Vide Lord Coke, in his 2d Inst. p. 73; and Sir William Temple, in his
Introduction to the History of England.

- Hen. III. before stated with respect to Old Sarum, and other boroughs similarly circumstanced; and also clearly pointing out the distinction between the general jurisdiction of the county and that of the *borough*.
- Cap. 18. In the 18th chapter, relative to the rights of the prerogative of the king, the suit at the *sheriff's tourn*, and the *view of frank-pledge*, are both mentioned amongst other things.
- Cap. 19. In chapter the 19th, relative to franchises, inquiry is directed to be made as to what persons in the county claim *return of writs*:—or to appoint their own *coroners*:—or *view of frank-pledge*:—or *infangthef*—*outfangthef*—&c. And, to state the subjects of inquiry generally, they embrace all the privileges detailed in the numerous charters we have before quoted:—especially the being *freed from doing suit at the sheriff's county court*, and his *tourns*.
- Sec. 2, 3. The 2d section speaks of the seizure of the franchises into the king's hands; and the 3d section as to writs of *quo warranto*.
- Sec. 6. In the 6th section of the 9th chapter, the franchise of having *view of frank-pledge* is mentioned.
- Sec. 17. The 17th section speaks of thefts by those who did not *dwell in boroughs or cities*:—which is said to be particularly alluded to, because in cities and boroughs the government was so well regulated, that such offences were there soon discovered.
- As a proof that at this time duties generally were *personal*, and to be exercised in places where the individuals *dwelt*,
- Sec. 16. in the 16th section of the 21st chapter, it is directed, “it should be inquired concerning sheriffs or bailiffs who have summoned upon juries and inquests, persons *not resident* in the county.” *Scotales* are also directed to be inquired into, as well as the periods of holding the *tourn*, and *view of frank-pledge*.—And direct reference is made to the Great Charter.
- Cap. 25. In the 25th chapter, the imprisonment of *freemen*, which was contrary to the Great Charter, is mentioned. With this observation of the recognition of the *liberi homines* of the common law, we shall close our extracts from Britton.

BRACON.

Bracton, who like Britton, composed in this reign his treatise on the laws and customs of England, first gives this brief division of persons,—in conformity with the Saxon laws—that “they are either *free or slaves* ;”* (liberi aut servi.) And in the same chapter he treats at length of those who are *native slaves*, (nativi,) and those who are *free by birth*.

He appears to solve the difficulty, which is found in Glanville, as to the *freedom or villainage of children*, born of a *free* mother, and a father who is a villain: for he says, that it is sufficient if the mother is free. This explains the circumstance met with in many boroughs, that marrying a free woman, made the children free, and in some instances even the husband:—the latter probably being attributable to the increasing disposition to encourage emancipation, which is put upon broader grounds in Bracton than in Glanville; and probably this greater liberality, apparent in Bracton, still further increased in subsequent times.

In the following chapter, the dependent state of the *slaves* is described. In that succeeding, the termination of the power of parents over their children is mentioned. One being by the death of the father, upon which his sons became sui juris.

Cap. 7.
Cap. 10.

Father.

The modes of emancipation are also stated;—as when a father sends his son from him with a portion of his inheritance:—Or he becomes of full age.

The means of manumissions are also defined. Slaves are under the power of their lords, as long as they are *dwelling* in villainage, *levant and couchant*, or hold the land. Those who go about the country, still continue slaves as long as they are in the habit of returning;—but when they cease to do so, they are taken to be fugitives. If they are vagrants, as *merchants* or mercenaries, they pay a certain sum, as acknowledgment of their subjection; but when they cease to pay it, they also become fugitives. If by any of these means,

* Lib. i. cap. 6.

Hen. III. they quit their lands, they ought immediately to be pursued and sought for, within the third or fourth day, till they are retaken and brought back. Nor ought any one to hinder them, by reason of any privilege or liberty; because the lord always retains his dominion over them, until he loses it by *negligence* or violent resistance; and when he who is pursued cannot resist, then it behoves him to return to his superior. If the fugitive returns to his villainage *within a year*, the lord may seize him, because, before a complete year, he can have no privilege. And if the lord should within a year make his claim, and the fugitive should return after the year, the lord may retain him. Nor will the time run against the lord after he has commenced a suit to enforce his claim; by continuing which, the emancipation may be avoided. But if the lord is negligent in his suit, or in entering his claim, then if the fugitive returns *after the year*, it shall not be lawful for the lord to take him; but the fugitive shall have his privilege, and may claim to be free: and it would be a breach of the peace for the lord to attempt to resume his slave by force.

Cap. 11. In the 11th chapter, an important distinction is taken between those who are slaves by condition, and those who holding by villain services, are only villains by reason of the tenure of their lands. And a species of tenure by villain services, by which some held, who were not in villainage, nor slaves but by a certain convention or agreement, which they made with their lords; of whom some had charters or deeds, and others not. These probably were in ancient times, (and are still in Cornwall,) called *conventiary tenants*. And there are also free tenants.

We have before observed, that freedom was not ascertained by *tenure alone*;—so that *freemen* were not to be confined to *freeholders*. Indeed, tenure did not materially affect this question; because it is distinctly laid down by Bracton in his 8th chapter, “that the tenement neither confers nor detracts from the person.” In the same chapter, it is afterwards said, “that the tenement does not change the state of the *freeman*, any more than the slave:”—the distinction being

Lib. ii.
Cap. 8.

made between that which he performs by reason of his *tenure*, and that which he does by reason of his *person*. Hen. III.

In confirmation of the inclination of the law to extend freedom, we should observe—that it is declared, if a lord contracts with his servant, he tacitly renounces the objection to the contract, that the party was his villain;—nor can he defend himself by saying, that he was ignorant of it; because he ought to know the condition of him with whom he contracts.

The 24th chapter of the second book describes the king as having the full right of determining what jurisdictions there should be, and the general care of the peace. The grants of soc, sac, view of frank-pledge, toll, them, judgment of life and death, and all other things which belong to the execution of judgment are considered.—And it is there distinctly laid down, “that the king cannot of right change that liberty which he had granted.” Lib. ii.
Cap. 24.

King's
grant.

In the same chapter, the term “universitas” is applied to cities and boroughs.—But although it is borrowed from the civil law, it does not seem to import more, than the aggregate body of the citizens and burgesses. In a subsequent part of the chapter, the word “ancestors,” is applied to the citizens and burgesses. But subsequently a less equivocal term is used; and the burgesses are said to hold the borough to themselves and their *heirs*; being the usual mode of granting the charters in this reign. Universitas

In the second chapter of the third book, the *Cinque Ports* are mentioned—also *Yarmouth* in Norfolk—and *Dunwich*. There is also a writ directed to the bailiffs of *Hastings*, that they should be at Shepway, and that they should summon there 24 honest and discreet *men* of *Hastings*, &c. Similar writs were directed to the bailiffs of *Romual*, *Heya*, *Doure*, and *Sandwyz*. From contentions which had often arisen between the men of the said ports, and the men of *Gernemuth*, and *Donwich*, a writ was directed to the sheriffs of Norfolk and Suffolk, to make known to the men of *Jernemewe*, and the bailiffs of *Donewiz*: so that if any one wished to complain of any thing, which had been done concerning the liberty, or within the liberty of the five ports, he should be before the justices at Shepway. Lib. iii.
Cap. 2.
Cinque
Ports.

Hen. III.

Lib. iii.
Cap. 8.

From the eighth chapter of the same book, which relates to the duty of the coroner, it appears, that the liberties of soc, sac, infangthef, and outfangthef, gave criminal jurisdiction, and those who possessed them, ought to have a prison.

Cap. 10.

The tenth chapter of the same book, relates to criminals, who fly immediately after a felony, and then in what manner suit ought to be made after such, and of whom. Some are in free-pledge;—and some of the family of another;—the first being called “uncuth,”* the second, “gust,”† the third, “hoghenehyne”‡

And it is said, because some fly after a felony, and cannot be apprehended, let hue and cry§ immediately be raised after such—and suit be made from town to town, until the malefactors be taken—otherwise the whole village shall be amerced. But it should be diligently inquired respecting him who fled, whether he be in *free-pledge* and *decenna*—and then the *decenna* shall be amerced, because they have not the malefactor to justice. But if such person be received without being in pledge, the town shall be amerced, unless he who fled, was not found to be in *decenna*, or *frank-pledge*. All except noblemen, knights, and their parents, clerks, and the like, are, according to the custom of the county, to be bound in some place, and to say of whose family or manupast they be, and by them he will answer—unless the custom of the county should decide otherwise, that he ought not to answer by his manupast.

The archbishops, earls, barons, and all who have soc, sac, toll, them, and these liberties, ought to have their knights, and proper servants, squires, butlers, cup-bearers, chamberlains, cooks, bakers, in their own “fridhburg.”|| So also

* *Uncuth* is a Saxon word, signifying, incognitus.

† *Hospes*.

‡ A person who came as guest to the house of another, and remained there for three nights, after which period, his host was responsible for his actions. In the laws of King Edward, set forth by M. Lamberd, he is called, *agenhine*.

§ *Hutesium* is derived from two French words, *huier* and *crier*, both signifying to shout or cry aloud.

|| *Froborgh*, alias *Fridburg*, alias *Frithborg*, is derived from two Saxon words, *freo*, (*liber, ingenuus*,) and *borgh*, (*i. e. fide jussor*.)—or of *frid*, (*i. e. pax*,) and *borgha*, (*i. e. sponsor*,) this is otherwise called after the French, *Frank-pledge*; the one being in use in the Saxon *æra*, the other since the Conquest. Vide Laws of King Edward, by M. Lamberd, fol. 133.

their squires, and others serving them—so that if they make forfeit to any one, the lords themselves may produce them to do right—and if they have them not, they shall pay a forfeiture for them. And so it is to be observed of all others who are of the manupast of any one—because every man, whether he is a free or bond-man, either is, or ought to be in frank-pledge, or of some manupast;—unless there should be any one travelling from place to place, and who does not hold himself more to one than another; or has something which would suffice for a free-pledge, as dignity or order, or free tenement, or in the city, things immoveable.—According to the laws of King Edward, which are expressly mentioned, every one of twelve years of age, ought to make his oath in the view of frank-pledge, that he neither would be a robber, nor assist a robber. And every one ought to be in frank-pledge, who holds land and a house, which they call “hasfastene,”—that is, householder—and so also others who serve them, whom they call followers, (*folgheres*,) or family servants, because no one ought to send his servant away, before he has been purged of all claims, with which he has been before charged. And he is of the manupast and family, who is at board and clothing; or at board only, with wages, as a menial and hireling of the house. Also according to the ancient custom, they are called of the family, who have been guests for three nights, “uncuth,” “gust,” and “hoghenehyne.” In fine, any one can receive another in frank-pledge, according to his own will—but he cannot dismiss him from frank-pledge:—nor *vice versa* as it seems, when any one has placed himself in frank-pledge of another, or in decenna, or was before sued with the decenna, he cannot withdraw himself when he likes.

Here we have a full account of that system of national police, which we have before seen, was in existence in the time of our Saxon ancestors, carefully continued down to this period. It appears to have been considerably amplified, and minutely defined—though the same in principle. We have the liberties of soc, sac, toll and them, referred to— which are more expressly mentioned again, in the 35th chapter of the same book. The intelligent reader will not

Hen. III.

Cap. 35.
Fol. 154, B.

Hen. III. fail to observe, that the principles of admitting in frank-pledge every person, either by his own pledges, or the pledge and security of his lord, as we have frequently described, is here most thoroughly and satisfactorily explained.

Cap. 11. The 11th chapter relates to criminals, who have altogether withdrawn themselves from judgment, and who are called *laughelesmen*. But minors are not capable of being outlawed before they are 12 years old—because before that age, they are not under any law nor in *decenna*; not more than women, who cannot be outlawed, because they are not under the law; that is, in English, “*in laugh*”—to wit, in *frank-pledge or decenna*.

The succeeding chapters relate also to outlawry, for the same causes; and as to the remainder of the third book, it will be only requisite to observe, that it relates merely to the pleas of the crown—in substance embodying and amplifying the Saxon Laws; particularly with respect to the receiving and maintaining *strangers* and *foreigners*.

Lib. iv.
cap. 21,
et seq.

In the fourth book of Bracton, the fullest description is given, of the rights and duties of *villains*—a proof of that doctrine of the law being at that time in full force.

Cap. 22,
fol. 194.
Tenure.

The following chapter, affords a confirmation of what we have before said with respect to tenure, a case being expressly stated, of a *person manumitted without free land*.

Fol. 235.
Cap. 46.

The illegal establishment of a new market, to the injury of liberties before granted, is provided for, in the 46th chapter.

Men of
the bo-
rough.

We frequently find in the charters, the expression of *men of the borough* (*homines de burgo*); and we have contended, that it means “*the men inhabiting within the borough*.” it is scarcely possible to give it any other application. Although this is drawing an inference, to establish an important point, from a single expression—yet it is justifiable to do so, where the term is clear and distinct, and no other meaning can properly be applied to it. This observation is the more to be relied upon, with reference to any subject matter, when a more precise form of expression is not to be expected. And this is the case as to all things of ordinary and constant

occurrence, with respect to which, it would rather create doubt and suspicion, that any particular expression should be applied to them. These observations, the common experience of mankind will justify.

The proper mode of considering this point will be, by exclusively reverting to that period of our history, when those expressions were adopted, and considering the country as divided into shires, hundreds, and boroughs,—to form the best judgment we can of the manner in which they would describe the persons belonging to either of those divisions. It is obvious, that the natural description would be, “the men of that place,”—“*homines de comitatu*”—“*de hundredo*”—“*de burgo* ;”—expressions we have so constantly occurring. Bracton, in his book of the Writ of Right, setting forth the form of the writ to bailiffs of a borough, describes the plaintiff by this simple description, “*A. de tali villa.*”

Hen. III.
Lib. v.
cap. 2.
fol. 329:

At these periods, no one would have dreamt of describing a person living in a particular place, as an *inhabitant* there, because nobody would have doubted that fact; and therefore we find, from the earliest times to a considerably advanced period in our history, that the word *inhabitants* is never used—but the more simple description, we have commented upon, of “*the men of the city or borough.*”

We have now completed our extracts from the statutes, charters, and laws, which occur in this reign—correctly termed, troublesome and irregular: but yet, notwithstanding almost all other things were changed, *the boroughs and their burgesses still continued the same.*

Conclusion

For the purpose of exacting money from them, their rights were frequently called in question—and sometimes seized into the king’s hands—but upon the fine demanded being paid, they were usually re-granted in the same form in which they existed before. We may therefore assume, that they were, after every effort to defeat them, restored to their original state. The condition of the *boroughs* and the *burgesses* at that time, must not be considered as a matter which

Hen. III. passed without canvass or investigation ; but rather as rights attempted to be disputed—but which, after controversy, were firmly established : and, notwithstanding all the attempts made upon them, they still continued to be possessed of their rights—for the burgesses and their *heirs*, without any incorporation—and without its ever having been suggested that they required a corporate title to enjoy them. We may therefore again, at the close of this long and turbulent reign, assert with increased confidence, that position we have maintained throughout our investigation of the charters—that *the burgesses were the inhabitants paying scot and lot, sworn at the court leet, and enrolled there ;—and that they were not incorporated ;—and that they did not hold by succession, but hereditarily, to them and their heirs.* It must also be remembered, that this is nearly 100 years within the time of legal memory ; and therefore leaves the point indisputable—**THAT THERE ARE NO CORPORATIONS BY PRESCRIPTION.**

Before, however, finally quitting this reign, the attention of the reader should be drawn to the attempts made by this king to strengthen his power, and to facilitate the raising of his supplies, by adding to his great council representatives of the local divisions of the country.

1243. In the 27th year of his reign, being offended with the conduct of some of his barons, he attempted to form a council of a part only of the tenants in capite, omitting to summon others.* The barons who assembled, broke up in anger, and declared themselves an incompetent assembly to proceed upon public business, because the other barons had not been summoned.

1254. Disappointed in this respect, about 10 years after, the king summoned four knights from each county to the council, to inform him what voluntary aid each particular county could afford him in his great necessity, towards the defence of Gascoigne.

1261. And in this year, the three knights, who had been sum-

* Matthew Paris. See also before, William I.

moned from each county by the barons, to meet at St. Hen. III. Alban's, were ordered, by writs, to repair to Windsor.*

We ought to observe, that in none of these writs were *citizens* or *burgesses* mentioned; and therefore, whatever opinions might have been entertained to the contrary, it is clear that the *citizens* and *burgesses* were not represented in Parliament, before, or at this period. But the king, finding himself embarrassed with his barons, began first, by summoning the knights from the several counties. And soon after, we shall perceive the expedient was also resorted to, of summoning the *citizens* and *burgesses*.

Thus a few weeks after the issuing of the writs we have last mentioned, others were directed to the *barons of Sandwich* and *Winchelsea*; but it does not appear that they extended farther. When the Earl of Leicester was desirous of strengthening his power, as opposed to the king, he improved upon the example which had been afforded him, and issued writs for summoning, not only the knights from the shires, (giving writs also for their expenses,) but also, for the first time, *citizens, burgesses, and barons* of the Cinque Ports.† The writs being directed immediately to the *citizens and burgesses*, and neither to the sheriffs of the counties, nor the mayors, bailiffs, nor chief officers of the cities or boroughs.‡

1265.

It appears that no writ was issued at this period to the citizens of London—their liberties being at that time seized into the hands of the king, for having sided with the barons. A strong instance, particularly at that period, of the effect produced upon a borough by the seizure of its liberties.

Thus we find the first summons of citizens and burgesses to Parliament, though not immediately continued, commencing at a time when the real character of the burgesses cannot be doubted, *and when they clearly were not incorporated.*

* 2 Prynne, Brev. Red. Parl. p. 28. † 2 Prynne, 29. 4 Prynne, 3.

‡ 2 Prynne, 30.

EDWARD I.

In considering the documents relative to this reign, not more celebrated for the warlike exploits of the king, than for the system and practice of jurisprudence which were introduced, we shall pursue the same division which we adopted in the former, and successively extract and consider, first, the statutes—secondly, the charters and municipal documents—and, thirdly, the general laws or treatises which occur in this period.

STATUTES.

1275. The great charters so frequently renewed in this reign, and
 Cap. 1. many of the other statutes, were, amongst other important matters, directed against the extortions of the *sheriffs*.
- Cap. 23. In chapter 23, the clause so frequent in the charters, that persons should not be distrained for any debt for which they were not debtors or pledges, is made the subject of a general enactment by the legislature.
1277. *Trading towns* are mentioned in this statute as separate from *cities* and *boroughs**—and we have before shown instances, and more could be added if necessary, to establish that there are grants of merchant guilds to places which were never considered as boroughs; therefore, Brady's assertion that these trading guilds were the foundation of boroughs, seems to be totally unfounded and gratuitous.
1278. The statute of Gloucester provides for the claim of franchises—and for their seizure into the king's hand, in case the claim should not be established—subject to be replevied if it could be shown that their ancestors had died seized of the franchises. In the form of the writ, which is afterwards directed, the view of frank-pledge in a manor is given as the instance of a franchise—as well as the holding of a hundred.
- Merchant
guilds.
- Statute
of Glou-
cester.
- Cap. 12. In the 12th chapter, the mayor and bailiffs of London are mentioned—and the vouching of *foreigners* to warranty.

* 2 Inst. p. 278.

The amendment of this chapter, in the ninth year of this Edward I. reign, applies to the same subject, and the parties were to 1281. be summoned to the hustings to receive the judgment of the court.

The term *foreigners* frequently occurs—as we have seen in Foreigners. early charters, and in the most ancient bye-laws and documents of most of the boroughs.

It is here used with reference to *London*, but in Lord Coke's comment upon this statute, it appears that this word was by no means confined to *cities or boroughs*, but was *applied also to counties*, and consequently foreign vouchers, in foreign counties are spoken of, which cannot but mean persons inhabiting or residing in other counties than those in which the proceedings were pending. In the same manner, and by analogy, there can be no doubt but that "foreigner," originally, and in the words of this statute meant, *a person residing out of the bounds or liberty of the city or borough*; and not an *alien* only, as has been mistakenly assumed.

We have seen, in some of the preceding charters, particularly those relative to Ireland, that religious persons were prohibited, except under restrictions as to number, from Ecclesiastics. 1279. residing in cities and boroughs; thus we find also, that in the recital of this first statute of mortmain, it is stated, Mortmain. that of late it was provided,—religious men should not enter into the fees of any without the licence of the chief lord. Nevertheless, such religious men have entered as well into their own fees, as into the fees of other men, appropriating and buying them, whereby the services which at the beginning were provided for the defence of the realm, were wrongfully withdrawn. It was, therefore, provided, "that no person, *religious* or other whatsoever, is to buy "or sell any lands whereby they may come into mortmain."

From which it is clear, that the doctrine of taking lands to religious persons by *perpetual succession*, preventing all chance of escheat, was at that time known, and had acquired the term of mortmain. But it does not appear that such

Edward I. doctrine had been applied to cities or boroughs—perhaps upon the ground that they were granted for the public good, and that the king, as the chief lord, concurred in the grant, thereby consenting to the waiving of the escheat, as required by the 34th Edward I., sect. 3. And therefore, although the same effect was produced by the grant in perpetuity to the inhabitants, the same practical inconvenience did not arise from it, nor was it at that time considered as a grant in mortmain.

1285. **Statute of Westminster the second.** The 13th chapter of this statute relates to the order of the indictment, taken in the *sheriff's tourn*, and is directed against the exactions of the sheriffs, and provides, that the inquest shall be taken by 12 lawful men at the least; and at the conclusion of the chapter, it is added, “so shall it be observed of every bailiff of franchise;”—which clearly applies to the courts leet.

The 38th chapter of the same statute, relative to juries, recites, “that sheriffs, hundredors, and bailiffs, harass those “who are under them by putting in assises and juries “men *not dwelling* in the county at the time of the summons.” It then provides, that no more than 24 shall be summoned:—and exempts, amongst others, those *not dwelling* in the county. With the exception only of knights not resident in the county, upon the ground of necessity, arising from their scarcity. And even those knights are required to have land in the shire.

Inhabitants From these enactments, it appears, that in this respect, as in others we have frequently had occasion to remark, all public duties were to be discharged by the *inhabitants* in the places where they *resided*.

Cap. 39. Return of Writs. The 39th chapter relates to the *return of writs*, stating that the sheriffs often returned, they had commanded the bailiffs of some liberties who did nothing, and often naming those liberties that had never the return of writs; wherefore it is directed, that the sheriff shall deliver a roll of all the *liberties* in the shire, which have the *return of writs*.

Hence we may infer, in confirmation of the charters before cited, that the great distinction which at that period, separated the *boroughs* and other liberties from the jurisdiction

of the *sheriff*, was the possession of that privilege so often repeated in the charters—"of having the return of writs." Edward I.

The second chapter of the statute of Winton, which related to the liability of the county for felons, provides that every county, that is to say, the *men dwelling in the county*, are to answer for them, with the franchises, within 40 days. Statute of Winton.

In the fourth chapter, the liability of *hosts* for their *guests*, which we found in the Saxon laws, and in the compilations of Bracton and Britton, is expressly recognized; as well as the *foreigns* of towns, the places without their jurisdiction. The bailiffs are every week, or at least every 15 days, to make inquiry of all persons who died in the suburbs or *foreigns*; and of *strangers* or suspicious persons. Cap. 4.

Provision is made for six men in every city, to keep at every gate; in every *borough*, 12 men; and in every town, six or four, according to the number of *inhabitants* of the town,—and they shall watch the town continually all night. *Strangers* were to be arrested, and the hue and cry was directed.

The being supplied with arms for the preservation of the peace,—respecting which they are to be sworn, is provided for in the sixth chapter, much in the same manner as in the laws of Henry II. In conformity with the Saxon laws, provision is also made against lodging *strangers* in uplandish towns. The sheriffs and bailiffs within their franchises, are to take heed that the hue and cry is duly made, and the defaults in it are to be presented by the constables. Cap. 6.

In these important provisions, we perceive, that the system of our Saxon ancestors is continued—that all duties and responsibilities are connected with local residence—that the great object of the provisions, was the securing an efficient local police; and that all the burdens connected with it, would rest upon the *inhabitants* of the *shires* and *franchises* respectively; so that the distinction between the *shires* and the *franchises* or *boroughs*, appears to be clearly defined and recognized, and the inhabitants of each respectively, would be bound to carry the law into execution in their respective districts.

The statute of quo warranto, relative to liberties claimed 1290.

Edward I.
Statute
of Quo
warranto.

by prescription or grant, fixes the period of the former to an enjoyment before the time of King Richard; explaining the reason, why that period is taken generally as the time of legal memory. The new statute of quo warranto, is to the same effect.

Statute 1
1293.

The vexations which arose from persons being impannelled upon juries, out of their proper shires, may be collected from the fact of another statute being made in the 21st of this reign, relative to this subject, restraining the bailiffs, sheriffs, and stewards from putting any persons on recognizances that should pass out of their proper counties, except they have lands and tenements to the yearly value of 100s.; saving amongst others, that "in cities, boroughs, and other market towns, where inquest do pass upon any matter touching them, it shall be done as has been accustomed."

Inhabitants

That the *inhabitants*, both in the counties and the boroughs, were, at this time, the persons who did the public acts, may be inferred from the fact, that the persons who by the articuli super chartas, were to be appointed for the purpose of securing the observance of the great charters, were to be elected by the "*commonalty* of the shire,"—clearly meaning *all the people or inhabitants of the shires*.

Cap. 7.

The seventh chapter of the same statute prohibits the constable of the castle of *Dover*, from holding any plea of a *foreign county* within the castle gate, except it should be the keeping of the castle; nor should distrain the *inhabitants* of the *cinque ports*, to plead any other where, or otherwise than they ought after the form of their charter, obtained of their king for their old franchises confirmed by the Great Charter.

Statute of
Winchester
1306.

The articles of inquiry upon the statute of Winchester, relate amongst other things, to the keeping of the gates of *cities* and great *boroughs*, and *strangers* being lodged in the suburbs and *foreigns* of the town—the keeping of the watch, and that all between the age of 15 and 60, be sworn to keep the peace.

So that we find from all these statutes, the ancient system of law was continued unaltered and unimpaired.

It is unnecessary here to repeat the observations previously Edward I. made upon its simplicity—purity—and efficacy. But merely noting its long unchanged existence, point out at this period the great change which, for the purpose of obtaining a more ready assent to the supplies made necessary by the long continued wars and dissensions, was effected in the constitution, by adding to the other rights of *burgesses*, the important privilege of being represented in Parliament; to which we shall now advert, before we proceed to cite the few charters necessary to illustrate this reign; because it will be important for the reader to observe distinctly, that although this additional privilege was conceded to them, their other rights were left untouched; nor was the *class* of persons who formed the burgesses, in any respect varied or affected.

It was in the 23rd year of this reign, that the first parliamentary writs issued, and 120 cities and boroughs, or more, were summoned to send members to Parliament. The sheriff being directed to return two knights for each shire—two citizens for each city—and two burgesses from each borough, within his bailiwick.* 1294. Parliamentary Writs.

These writs were all in the same form, and of the same date, except that to the *city of London*.†

It will be observed, that the writs were directed to the burgesses then existing. Those *burgesses*, as we have shown before, were the *inhabitants* paying scot and lot, sworn and enrolled at the court leet—and we must assume that the citizens, and burgesses, returned to Parliament according to this new summons ordered by the king, were elected by that class of persons.

There is now no direct proof from the writs, or returns, of the manner in which the members for cities and boroughs were elected; because, generally speaking, and with the particular exception of London, the return from which was somewhat fuller, the names of the representatives were merely endorsed upon the writ, with the addition of the names of two manucaptors, who were responsible for their appearance in Parliament.

* Rot. Claus. m. 4, dors.

† Frynne, part ii., p. 39.

Edward I. Notwithstanding the burgesses of Buckingham are referred to in Domesday, it is observable that the sheriff of Buckingham returns—that there are *no citizens or burgesses in his county*—nor cities—nor boroughs—on account of which, he cannot return any citizens or burgesses.

Buckingham.

We have seen before, that the other Buckinghamshire boroughs were subsequently created ; and the probability is, that either Buckingham had ceased, at that time, to exercise the privileges of a borough, in the manner we have before generally described, or that it had been seized into the king's hands.*

There were also similar returns for Rutland—Westmoreland—Lancaster—Lincoln.

But none were made by the constable for Marlborough, nor by the bailiffs of the liberties of Calne or Worth.

There is some variety in the words and form of the returns for the counties, as we have seen in the words of charters, though they all, no doubt, in effect, meant the same.

Thus, some of the knights are stated to be elected by the “whole county”—others, in the “full county court”—others, by the “whole *commonalty of the county*,” as Cornwall.

In Dorset, and Somerset, the returns are—in the “full county courts by the whole *commonalty*.”

The return of *Nottingham* was by the “common assent of the town”—and the same for *Hereford*.

In illustration of the observation we have before made, that the return of writs was one of the distinguishing marks of a borough—that of *Derby* is said to be made by the bailiff, *who has the full return of writs*. And the bailiffs of *Yarmouth* were also described as *having the return of writs*—but they made no answer to the sheriff's precept.

The general observation which would result from the date of these returns is—that as we have shown there can be no municipal corporation by *prescription*, those bodies being first created long within the time of legal memory, so it is clear, that there could be no prescriptive right of electing members for cities, and boroughs—because the right to

* Prynne, part ii., 41.

† Prynne, part ii. 43.

return members also, originated thus far within the limits of Edward I. legal prescription.

As the present subject of our inquiry is rather the municipal, than the parliamentary nature of boroughs and burghesses, we shall not here further pursue that part of our subject. Nor is the question with respect to the right of election of any importance to our inquiry—otherwise than as establishing *by whom* that important act was done—and thereby showing, at least in that instance, who *acted* as burghesses.

The representatives of boroughs being thus admitted into Parliament, we find their right of interference expressly recognized by the statute of talliages, of the 34th of Edward I., where, in the 1st chapter, it is provided, that no talliage, or aid, shall be taken without the assent of the archbishops, bishops, earls, barons, knights, *burghesses*, and *other freemen* of the land.

From which it seems impossible not to draw the conclusion, that the burghesses were *freemen*—that is, the “*liberi homines*” of the common law, as contradistinguished from villains—and not the freemen of corporations—because, as we have just observed, those bodies did not exist.

The local character of the liability to serve upon juries, as well as that of the liability to all other public burdens, may be further collected from the 8th section of the *Charta de Foresta*, by which it is provided, that none of the officers of the forest shall be put in juries to be taken without the forest;—which is founded upon the same general principle as that upon which the burghesses are exempted, viz. that as they perform those duties at their own court of *Swainmote*,* they are exempted from similar duties elsewhere.

Juries.

1306.

We have before seen that the corporate character of *ecclesiastical* bodies was recognized at this early period; and we have also learnt, that *common seals* were used by persons, and bodies not incorporated.

Common Seal.

In the statute 35th of Edward I., chapter 4, it is provided, that abbots, notwithstanding they had been before *corporate*,

* This word is compounded of *Swain* and *mot*, or *Gemot*; and signifies a court incidental to a forest, at which the freeholders resident within it attended.

Edward I. bodies, should thereafter have a *common seal*, which, although it had theretofore been used to remain in the custody of the abbot, and not of the convent, should remain in the custody of the prior, and four of the most discreet men of the convent—to be laid up in safe keeping under the private seal of the abbot;—and that any other deeds afterwards sealed with any but the common seal, should be void.

CHARTERS.

We now proceed to collect and consider the charters and other municipal documents which occur in this period of our history.

Either this warlike king, engaged in his military exploits, or distracted with the difficulties which surrounded him when he ascended the throne, granted but few *charters* in the *commencement of his reign*—or they have been lost, or imperfectly recorded; or he was at first more anxious to seize those which had been granted by former kings, than to concede any of his own. For in the calendar of the *charter rolls*, there are *none entered* in the first, and only four in the second year of his reign.

It may however be questionable, whether there are not still to be found by *inspeximus*, if not by the original charters, others which were granted in these years.

Norwich. Thus in a charter of the 27th of Henry VI., one of Edward I., granted in the second year of his reign, to the town of *Norwich*, is mentioned by way of *inspeximus*.

Also a charter of the first of Edward III. contained an *inspeximus* of a charter granted by Edward I., in the first year of his reign, to the University of *Oxford*. A variety of similar instances occur, but to which it is not necessary for us more particularly to advert.

UNIVERSITY AND CITY OF OXFORD.

We have seen in the previous reign of Henry III. the commencement of the disputes that had arisen between the university and the respective burgesses of Oxford and Cambridge.

They seem not to have been appeased—but, on the contrary, to have increased with time; for it appears, that during this reign, contentions frequently arose between *the chancellor and scholars of the university, and the mayor and burgesses of the town.* Edward I.

In the 22nd year, the mayor and commonalty of Oxford were amerced, respecting the election of Henry Owen,* one of the comburgesses, as mayor—who it appears acted without having taken the oath of office, and had levied a talliage in the town without the king's consent,—for which he was fined. And because the commonalty had submitted to him as mayor, the mayoralty was seized into the king's hands, and ^{he and} committed to the custody of the sheriff, in the name of the king. Another instance in which the sheriff had the authority over a place when the local jurisdiction had ceased. 1293.

The farther history of the disputes between the burgesses and university, will also hereafter show, that the jurisdiction of the borough, was confined within its limits, and that the sheriff exercised authority without the town. The seizure of the mayoralty did not however long continue,—as a writ was afterwards issued to the sheriff, for the restoration of the liberties of Oxford.

But difficulties arising respecting the conflicting jurisdictions of the mayor and burgesses, with the *chancellor and university*, it seems that the latter applied in this year to the king for a charter,—by which he granted to the scholars of the University of Oxford, “that in all personal actions, the *burgesses*, and other *municipal laity* of ours at Oxford, might be sued before the *chancellor* of the same university—and “no one should hinder them by our prohibition.”† 1274.

This charter was clearly intended for the purpose of limiting the jurisdiction of the *borough*, and protecting the members of the *university* from the interference of the mayor—at the same time that it gave the chancellor authority over the burgesses.

* Mad. Fir. Bur. pp. 51 and 94.

† Harl. MS. 6702, p. 386.

Edward I. Discords, similar to those at Oxford, existed also between the scholars and townsmen of *Cambridge*, of which the traces are visible in the Year Books.*

1290. At the Parliament held this year, a decision respecting the disputes between the chancellor and scholars of the university, with the mayor and burgesses of the town, was made by the king and his council, in the presence of the chancellor and certain authorized masters—with the mayor and burgesses, all mutually agreeing, by the consent of the king, to put an end to their contentions, by staying all actions between them. But because it appeared to the king and his council, that no individual was excluded from any personal action, it was provided, that neither the chancellor nor scholars, nor the mayor and burgesses, should give assistance to any person prosecuting such an action. And if any of the former complaints should be renewed, the *chancellor* and *scholars* promised, for themselves and their successors, that no greater favour should be shown to a *clerk* than to a *layman*.

The mayor and burgesses, on their part, promised, that they would firmly keep all the liberties and free customs which the chancellor and scholars had. And because it appeared to the *mayor* and *burgesses* that the chancellor and scholars abused some of the customs granted to them by charter, and strove to use some which were not granted to them, to the injury and disinheritance of the crown and dignity of the king—the mayor and burgesses present certain articles to the king, to which he answers:—*First*—To the complaint, that the chancellor, at his will, had released such persons as the four aldermen and eight burgesses had arrested, and had cited the aldermen and bailiffs before him: the king answers—That the chancellor should have cognizance of all transgressions within the town in which a clerk was one of the parties, except pleas of homicide and mayhem. That the king should know of *his bailiffs*, who behaved themselves in their offices otherwise than they

* 4 Edward I. fol. 6.

ought. And if the bailiffs should think themselves injured ^{Edward I.} by the chancellor, they might come to the king's court, and there have justice.

It is then directed, that the chancellor and mayor should have cognizance of forestallers *in the town*; and the *sheriff of the king without the town*. That the forfeitures should, with the assent of the *chancellor and mayor within the town*, and of the *chancellor and sheriff without the town*, be given to the Hospital of St. John, without the East Gate, as alms of the king.

To the complaint of the mayor and burgesses—that the chancellor releases those of the *laity* whom he has committed at so heavy a ransom, and so binds them not to transgress again, even by an obligation to pay money, so that many of the town are destroyed, and disinherited—the king answers—“that for the future the chancellor shall direct “reasonable amends and security as it had been thitherto “accustomed.”

To another complaint, the king answers—“that the burgesses should take *no oath before the chancellor* without “saving their fidelity to the king; that they should not “swear that they would not make their complaints in “the king's court; that the oath of the *aldermen*, of the “*eight*, and of the *fifty men* of the town, should be taken as it “used;—so that the *burgesses should not swear but for themselves*. And the mayor was for the future,* to certify to the “chancellor *where the oath of the burgesses was to be taken*.”

Concerning the complaint of the mayor and burgesses, that the chancellor and scholars had by their proctors taken the forfeitures of unwholesome meat and fish, although they belonged to the king and his bailiffs, without any warrant, as it is believed, and to the injury of the king and his farmers, the king directs, that—“neither the chancellor nor the “mayor shall take the forfeitures, but they shall jointly have “cognizance of those matters, and the forfeitures shall be “given to the Prior of the hospital of St. John.”

As to the complaint, that “although by the charters no

* This shows the burgesses were sworn.

Edward I. “liberties were granted to any others in the town but the “*scholars* of the university, who were *exempted from the community to answer before them, or at the same time with them,* “as to anything relating to the king or the community: yet the “chancellor and scholars, by their proctors, appropriate to “themselves others who are not scholars—as taylor, barbers, writers, parchment-makers, and such like—who are “not of their jurisdiction, but *who have in the town their wives, their families,** and their merchandises; and this to the great “loss of the king and his farmers:—it was agreed between the “chancellor and masters, and the mayor and burgesses, that “nobody should enjoy the liberties and privileges of the “community, but the clerks, their families and servants, “parchment-makers, illuminators, writers, barbers, and “other official men who were of the robes of the clerks themselves; and *if they interfered in any merchandises,* they “should be talliable together with the burgesses.”

To another complaint, that although the mayor and burgesses had been used to let their *tenements* in the town to farm at their will, for the support of themselves and their children, the chancellor and scholars do not permit them to let for a shorter period than three years, to the great loss of the community; it was answered by the king thus—“The “burgesses shall not be impeded by the chancellor, scholars, “and proctors, from selling or letting their tenements as they “will; so that nevertheless no fraud, collusion, or agreement “shall be made, by which the clerks shall be turned out of “their lodgings, or their lodgings be made dearer; and also “that the clerks shall not let their lodgings first levied “against the usual custom.

The mayor and burgesses also complained, that although every *free man* ought to have a reasonable summons, the chancellor had summoned them to appear in three hours, and upon default had punished and excommunicated them at his will; the king orders, that “the *men commorant* † in the town “should for the future, be summoned for the next day and

* This shows they were residents.

† That is, the freemen resident there, who when sworn are the burgesses.

“not otherwise: but vagabond men (*vagabondi*) shall be ^{Edward I.} summoned at the will of the chancellor, and according to what should seem reasonable to be done: and if it should be necessary that inquisitions should be made *for keeping the king's peace*,* that the *men commorant* in the town should come at whatever hour they were summoned.”

Another complaint stated—that when knights, *free men*, and others, passing through the country are received as *guests*† at the *houses* of the burgesses of Oxford, if any clerk of the university should wish, justly or unjustly, to bring an action against such *foreigners* (*extraneus*) for any foreign covenant or convention made without the county (*extra comitatum*), the chancellor, at the complaint of the clerk, sequesters the horse, equipage, and harness of such *foreigners*, although they should be in the service of the king or of any nobleman. And if the host did not dare, or was not able to arrest or retain the goods of the *foreigner* being with the king or such nobleman, but permitted him to depart freely, the chancellor punishes him as guilty of a transgression: as to which, the king directs, that “such persons passing through the town of Oxford, shall answer before the chancellor of contracts and transgressions made with the *scholars* within the town of Oxford, and not of foreign contracts and transgressions.”

The mayor and burgesses also complain, that when any *layman*, has been wounded by a *clerk*, so that his life is despaired of, the chancellor requires that the clerk should be delivered to him, before the truth of the life and death of the wounded can be known, and excommunicates all that say to the contrary; and the king “enjoins the chancellor, that he shall discharge no *clerk* detained in prison for wound or mayhem until the certain and undoubted truth shall be known, that the death or mayhem is not despaired of; and the chancellor is to take care that in this respect he does justice to all.”

The last complaint which the mayor and burgesses make is—that whereas the chancellor and scholars claim to have

† That is, holding the court leet.

* See the Sax. Ll., &c.

Edward I. the taxing of the *houses* of the burgesses in which the *clerks* live, in the town; and such taxation ought to be made every seven years, and by the oath of the masters and burgesses; yet the chancellor, scholars, and proctors of the university, make the burgesses themselves swear for the purpose of making that taxation every five years; and do not permit the masters to swear; by means whereof the taxations are not reasonably made, as of right they ought to be, to the great damage of the burgesses, and also of the town of the king, and without warrant, as they believe: respecting which the king orders, that “the taxation of the *houses* in the town of “Oxford shall be made every five years, as the charter of the “king directs, by two *clerks* and two *laymen sworn*; and if “the clerks swear by the oath what they took to the uni- “versity, the *laymen* may swear by the oath what they “took to the king; and if the clerks make a new oath, then “the laity shall do the same, in the place where it was “usual in times past to do it,” &c.

It cannot but be observed, that in the former charters, the *university* from time to time procured from the king grants of privileges which before belonged to the town, and gradually acquired many of the borough privileges. In the charters themselves, it is left in doubt, whether they did this by usurpation or by concession from the burgesses: but the account we here have of the disputes between the town and the university, seems strongly to indicate, that at least many of the privileges they had assumed were encroachments, as the king corrects many of them. From the manner in which the mayor and burgesses put forward the injury which the king had sustained, from the usurpations of the chancellor and *scholars*, the fair inference would seem to be, that the university had been the most powerful body of the two; and that the burgesses found themselves unequal to cope with the influence of the ecclesiastical body except by the aid of the king, stimulated to their protection by his own interest.

This document is also of considerable importance in our present inquiry, as affording many inferences with respect to

the condition of the *burgesses* at that time. For instance—Edward 1. the *burgesses* are generally described with reference to their families:—which, from another passage, appears to mean their domicile or household:—and in the description of the persons who ought to share the privileges of the borough, and bear its burdens, as of talliage and other things, they are mentioned as having their wives, families, and *merchandise* there; all of which tends to show, that the *burgesses* were the permanent *householders*, who had their *domiciles* within the place. Their *tenements* are spoken of, and mention is also made of the scholars lodging with them, which could only be, if they were householders. The classes of persons opposed to each other, are those who in the language of the law, are *commorant* there, and *vagabonds*—*burgesses*, and the *passengers* or *foreigners*, who lodge in their *houses*.

It is true, that reference is made as well to the *merchandise* of the *burgesses*, as to their wives and families, which may induce some to think, with Dr. Brady, that *burgess-ship* was connected with trade—and, with others, that a person was entitled to be a *burgess*, as was frequently contended in the city of London, provided he had a shop and *merchandise* there—although the former should be only part of a house, and the person should not reside in it. But it must be recollected, that there is nothing in this document which shows that the having his *merchandise* there, was anything more than one of the proofs, and not the only one, of his being a permanent resident; or that it was sufficient of itself to make him a *burgess*:—*merchandise* being connected with his wife and family. Nor does the close of that passage go farther, than to make the attendants of the scholars subject to be talliaged with the *burgesses*, if they trade—but certainly not to make them *burgesses*.

The scholars being described as exempt from the community (communitate,) which means the community of the *burgesses*—it may be urged, that this use of the expression shows that the *burgesses* were an incorporated body. It no doubt proves that they were treated as an aggregate—

Edward I. but not as a corporate body, in the modern acceptation of the word—as we have abundantly shown from other documents. There is no term of incorporation applied to the burgesses—their successors are not spoken of—and the word *community* is used in no other sense than when it is applied to the inhabitants at large of the realm, or of any county.

It must be remarked, that the greater portion of the matters of dispute between the university and the mayor and burgesses, are with reference to the *jurisdiction*, claimed by the one or the other; and the constant reference to that of the mayor, aldermen, and burgesses, for the purpose of preserving the peace, regulating the assise of bread and beer, and the sale of victuals, (all within the cognizance of the court leet,) as well as the collection of the king's firm and custom—can leave no doubt, that the characteristic feature in the description of a borough, is the jurisdiction it has, for the benefit of the public, and for the purposes of good government and local regulation—not for the mere arbitrary communication of undefined privileges, to persons not resident in the places to which the charters were granted, as practised in the present day.

As to the limits of the respective jurisdictions, that of the university appears to be described as rather personal than local—extending to all the scholars, whether residing within the bounds of the borough—in the county—or in the surrounding villages—provided they were really scholars—as well as to their attendants. Whilst the local jurisdiction of the mayor was confined to the borough;—and all beyond was under the jurisdiction of the sheriff.

Another thing also observable in this document, is the variety of names which were applied to the university—at one time they are called the “chancellor and scholars”—at another, “the chancellor, proctors, and scholars”—another the “chancellor, masters, and scholars;” and yet there can be no doubt, but that all these terms meant the same body—as the mayor, aldermen, and burgesses, or capital burgesses, jurats, assistants, freemen, and commonalty, in other bo-

roughs, meant also the same class of persons, though described Edward I. by different names.

As we have thus far pursued the histories of Oxford, Cambridge, and their universities, it may be convenient to introduce in this place a few documents that occur relative to Oxford in the two succeeding reigns.

Thus Edward II. in the eighth year of his reign, at the request of Henry de Harcla, then chancellor of Oxford, *confirmed* the above ordinance in all its particulars. 1316.

The same king, in the same year, also confirmed to the *chancellor, masters, and scholars*, and their *successors*, the charter made in the 32d Henry III., and the privileges granted by it, although they should not have been used.

There is a confirmation of a guild granted to the cordwainers of Oxford by Henry III., and confirmed by Edward II.

Edward III. in the first year of his reign, confirmed to the *citizens* of Oxford the charters of Henry III., John, Edward I. and Edward II., provided that they did not interfere with the liberties granted to the chancellor of the University.* 1327.

The same king, in the 10th year of his reign, granted a charter of confirmation to the chancellor, masters, scholars and university, at the instance of Robert de Stratford, Archdeacon of Canterbury, and the chancellor of the university, which, repeating many of the clauses of former charters, re-granted them. A clause was added which, reciting that the burgesses would not permit the sellers of woollen and linen cloths to cut and sell them in parts to the scholars, but compelled the sale of them whole—directs, that they may do so for the future without any impediment from the mayor, bailiffs and burgesses. Another clause was also added, stating the chancellor was afraid of committing to prison offenders in the university, lest he should afterwards be burdened in consequence of it, and indemnifying the chancellor, by protecting him as far as was in the power of the king, from all suit and molestation on that account. 1336.

It may be observed of this charter, that it contains two

* Rot. Cart. 1 Edward III. n. 54.

provisions, the legality of which might be questioned. The first takes away the prohibition in the case of the chancellor's jurisdiction, which it would seem could not be done except by the legislature; because, as a writ of prohibition is one to which the subject is entitled of right in cases where it applies, the crown, although it might waive any of its own powers, could not deprive the subject of any right he lawfully enjoyed; and it would therefore follow, that this clause would either be useless, as having no effect at all; or if it had any, it would then become illegal.

The second clause is that which protects the chancellor from being called to account for the imprisonment of any person he might commit;—a provision clearly illegal, if it were not qualified by the restrictive words, “as much as in him lies,” which, in reality, makes it altogether inoperative, because the king had no power to do so.

⁴⁶
1335.
20 Ed. III. It appears also, that in the 20th year of Edward III., considerable disputes and disturbances, accompanied with much violence, had again arisen between the members of the university, and the people of the town:—to appease which a charter was granted to the university, to put at rest some of the disputed points—to restore their liberties, which had been seized into the king's hands—and to recall the scholars, many of whom it seems, had left the university.

A charter was also granted to the people of Oxford, to restore their liberties, which appear to have been seized: and it will be seen from the charters, that on this occasion at least, the scholars and the people of the town, had behaved with great violence and intemperance.

This charter commences with a long recital of the advantages which were derived to the public at large, from that pure fountain of liberal science, of which the university of Oxford was the head; and stating the desire of the king to put an end to the discords which had arisen between the scholars of the university, and the men of the town; that from the homicides, depredations, and other things which had been done there, it would destroy the uni-

versity, if a rigorous prosecution were had against all:—the king, willing to restore it, and re-establish its peace,—and the chancellor, as well as the mayor and commonalty of the town, having in consequence of their mutual misconduct, humbly submitted all their goods, jurisdictions, rights, liberties, and privileges to the king, who had taken into his hands the said discords; and all the jurisdictions, liberties, and privileges, as well of the university, as of the mayor, bailiffs, and *men* of the town,—in the first place prohibited them from all mutual acts of aggression. And for the purpose of recalling the dispersed scholars, the king directed that they might return, and remain there in security, and be under his protection. — Restoring to the chancellor, masters, and scholars, all the jurisdictions, rights, liberties, and privileges, so taken into the king's hand.—That as many great discords, attributed to the avarice of the lay sellers of victuals, had arisen from the chancellor of the university, and the mayor of the town, having the assise of bread and beer intrusted to them in common, the king directs that for the future, the chancellor alone shall have the assise of bread in the town and suburbs, as well as the assise of weights and measures, rendering an account of the forfeitures and profits to the mayor and bailiffs of the town, to be levied by them *in aid of their firm*; and also cognizance of all forestallers;—the forfeitures to be paid to the hospital of St. John. And although the mayor, bailiffs, aldermen, or other *men* of the town and suburbs, ought not to intromit in the premises, yet the king directs that they should humbly obey and attend the chancellor; who is empowered to imprison those carrying arms, and to seize them, and expel those who are refractory, or otherwise proceed against them by *ecclesiastical censures*, as was accustomed in times past. That for the cleansing, repairing the pavements of the town, and removing all nuisances, the chancellor is empowered to compel those whose duty it is to do those things to obey him by *ecclesiastical censures*, against which his prohibition shall not avail.

It was stated, that as the *laymen* were generally hostile to

the *scholars* and their servants, it is granted, that when the *ministers of the university*, and the servants of the clerks, are to be assessed or taxed, to any quota to be paid for their goods in the town and suburbs, the chancellor, or his vice chancellor, and not the mayor, or *men of the town*, shall assess and tax to the quota, the ministers and servants of the scholars, to wit, the household servants, &c., faithfully and reasonably, as the *other men of the town* and *suburbs* are assessed, according to the quantity of their taxable goods. And if the *men of the town* should complain of the taxation having been improperly made by the chancellor, it should be inquired into by the king's ministers, and corrected.

One feature of this charter, not to be overlooked, is that the liberties were seized into the king's hands, as it is expressly stated, by the consent of the parties.

It will be observed also, that the assise of bread and beer—weights—measures—the inquisition of forestallers—repairing and cleansing of the pavements, which were granted by it, were within the jurisdiction of the *leet*, and transferred to the jurisdiction of the vice chancellor.

It may be very questionable, as was suggested before, whether the king had power to take away the prohibition, and subject the parties, altogether without appeal, to the ecclesiastical jurisdiction. It should be observed, that the mention of ecclesiastical censures twice in this as well as in subsequent charters, shows clearly that the jurisdiction of the chancellor was purely ecclesiastical; although the portion of civil jurisdiction before mentioned, was transferred to him.

As to the borough, it seems clear from the repeated use of the word, that "homines" in this charter meant the burgesses of the town; and that those were the persons who paid the public quota and taxes.

The last clause but one, which restores to the scholars their goods, although they had not prosecuted the thieves, stands also on the same questionable ground, as the clause respecting the prohibition; if indeed it had any practical effect. But it should be observed, that the king grants that clause with the

qualification, “as much as in him lies;” and the scholars are guarded only from the interference or interruption of the king, and his officers.

In the next year, the same king confirmed this charter, as he states, from the special affection he had for the university, and also for the persons of Humfrey de Clerleton, then chancellor, and Lodowick his brother. 1356.

It appears also that in the same year, a question arose between the university and Richard Damary, knight, tenant of the king at fee-farm, of the hundred without the north gate of Oxford, respecting the jurisdiction over the suburb. — By an indenture made between them, it seems that Damary claimed assise of bread and beer of all the *tenants and residents* within that hundred, and cognizance of pleas in his courts there, and the fines;—upon the other hand, the chancellor, master, and scholars, claim entire and equal jurisdiction in the *hundred or suburb*, as elsewhere in the town of Oxford, and the other suburbs; with all the heads of jurisdiction before enumerated in the several charters.—The claims of either party having been heard before the king and council, by the mediation of John, Archbishop of York, Chancellor of England, and William, Bishop of Winchester, Treasurer of England, it was *agreed* by unanimous consent between the parties, *if it should please the king*,—that the chancellor, masters, and scholars should have jurisdiction in the hundred and suburb;—whether any of the suburb was within the hundred or not—of *all disturbers of the peace*, and of offenders against the statutes, customs, liberties, and privileges of the university; where one party is a clerk, or servant of a clerk, or a minister of the university, by imprisonment, banishment, or *ecclesiastical censure*.—With cognizance of all causes, contracts, and pleas of moveable goods, injuries, and transgressions, where *a clerk* or any of his family, or a servant clerk, or minister of the university should be one of the parties,—pleas of the death of man, and mayhem of free tenement only excepted,—with cognizance of forestallers, re-graters, and of victuals: the taking of the houses, taxing and paying of the quotas of the

ministers of the university, and servants of the clerks, *com-morant* in the hundred or suburb, as well as the keeping of the streets clean, the assise of weights and measures, and of bread and beer. All which liberties, it was agreed between the parties, and granted by the said Richard, with the consent of the king, *the university* should freely and fully enjoy. And although the said Richard ought not to intromit by himself or his officers in the premises; nevertheless, he wishes for himself and his heirs, that all persons *residing* in the hundred or suburb, should humbly obey and yield to the chancellor.

This agreement between the parties, the king accepted, approved, and confirmed; directing that the chancellor, masters, and scholars should enjoy all those privileges.

It is rather surprising, that a question of this description should arise respecting the boundaries of the several jurisdictions. The chancellor only enjoyed the privileges which he had procured from the borough, and which were limited to it. The tenant of the hundred, only had jurisdiction over the hundred;—and it of course resolved itself into the question, whether the suburb was a part of the city or of the hundred. In London, the suburbs and liberties are a part of the city:—so also in many other places: and it would seem that the usage should have put the matter at rest, almost without a question.

It is observable, with a view to the subject of our present inquiry, that the persons who were stated to be under the jurisdiction of the tenant of the hundred, were the *tenants and residents*, the usual description of the suitors at the leet: and the same persons, who within a borough, as well as in the county at large, formed the burgesses and the suitors at the sheriff's tourn.

It must also be remarked, that although the university is here spoken of as an entire body, under the name of “*universitas*,” yet it was not incorporated till the reign of Queen Elizabeth;—which affords a strong reason for thinking, that boroughs not circumstanced as the university, and never so described, could not be corporations.

1358.

Edward III. by another charter in the 32nd year of his reign, repeated the former grant of assise of bread and beer, weights and measures, and cognizance of forestallers and re-graters, with other privileges and liberties, as given by a former charter; which he states also provided, that the clerk of the market should not intromit himself within the borough or its suburbs to exercise his office, in any thing touching them: whereas in fact, nothing of that kind is mentioned in any one of the charters, before stated as granted to the university;—and it seems clear, that the grant here alluded to, was contained in one of the charters given to the borough.

IPSWICH.

We have before, in the reign of King John, referred to some of the documents relative to the peculiar history of the borough of *Ipswich*; and amongst them, to the qualified admission as burgesses, for some special purposes, of noblemen and others, who had lands and possessions within the borough; and who had been made burgesses for the purpose of exempting them from toll; but who paid in return for that exemption, scot and lot.

Ipswich.

The same occurs again in this reign, for in 1273 we find amongst the records of this borough, the following entries:

Edward I.
1273.

Forasmuch as the *heirs* of many *foreign burgesses* do refuse to contribute and pay to the farm of the town as their ancestors have been accustomed to do, for having *liberty in the town* as their ancestors used to have, by *common assent of the town*, it is ordained and agreed, that *no foreign burgess* be hereafter made in the same town, except for *term of his life* only; and this for some certain *gift to be made yearly to the farm* of the town at the feast of St. Michael, or that he be at *scot and lot*, according to his estate, to the common talliages of the town; that those who are at lot and scot shall be quit of toll in the said town, as well of merchandises as of other their goods, and those *who are not at scot and lot*, shall be quit of corn and other their goods, growing and renewing in their own *lands*, and also of all things brought to their own use, only in form under written, that is to say:—

Edward I. Lord Hugh Tallemache, granted to give to the farm of the town of Ipswich, that he be quit of toll in the town, of his own granary, 8*d.* and two bushels of wheat.

Lord Guy Wysderlande granted for himself and his villains, &c.

John de Menartaine gives to the commonalty, that he may be a burgess, 4*s.*; and to the bailiff, 2*s.*: and granted to be at *lot and scot* to the farm, as a *native burgess*, and all the three appear to be sworn.

Lord John de Louth, and Lord Roger de Loeday became town burgesses, and proffered a cask of wine each; and this is given them for the counsel and aid to be had from them in the business of the town. The first is sworn, but the other does not appear to be so.

Three other persons were admitted as burgesses.

Robert de St. Quentin becomes a town burgess, and gives to the commonalty 2*s.*; to the bailiffs 2*s.*; and hath granted to be at *scot and lot*, &c.

Master Roger de Holbrooke became a burgess, and granted to give *by the year* to the said farm for his granary, and villains, &c.

Five paid for their granaries.

And the whole mentioned above for this year are stated to be sworn.

Two became burgesses, and grant for their granaries.

Three became burgesses, and grant to be at *scot and lot*.

Another is made a burgess, and grants for himself and his villains.

And they were all *sworn*.

These are made burgesses, and grant to be at *scot and lot*.

One became a burgess, and granted for his granary.

And another granted for his granary and villains—and they were all sworn.

One became a burgess, and paid to the commonalty half a mark; and to the bailiffs 2*s.*—and granted to be at *scot and lot*.

Another made a burgess, proffers to the commonalty a

pipe of wine, and granted yearly 4*d.* to the farm of the town, Edward 1. that he might be quit of toll, of corn, and all other things—and that he be at scot and lot.

Another became a burgess upon a present payment. And another, who also granted that he would be at scot and lot.

Be it remembered, that all the burgesses in this book named, were made before the taking of the town into the hands of King Edward;—that is to say, before the 13th year of his reign.

In the same year—in which also an ancient book, belonging to the corporation, called the Dom Boc, is said to have been compiled—the King, by a charter, reciting that for certain offences and excesses by the burgesses, he had caused the borough to be seized into his hands, restored it at fee-farm to the burgesses and their *heirs*. 1291.

From which it is evident, that Ipswich was not, at that time, a corporation:—and also, that by the seizure of the borough, the prescriptions belonging to it had been destroyed;—and, therefore, even if it had been originally a corporation by prescription, it must have ceased to be so upon this seizure and re-grant.

The book to which we have alluded, called the Dom Boc, is in the Norman French, and commences by reciting, that the old Domesday of the laws and ancient usages of the town, had been fraudulently taken away by a false town clerk; and that, in consequence, bad usages had been introduced. That the commonalty, with one accord and assent, being desirous to redress the same, and that the laws and usages of the town might be openly set down, for the common profit of strangers, as of the townspeople, so that the bailiffs and burgesses of the same town might have a knowledge of it, had chosen 24 of the most wise and discreet of the town, sworn for that purpose. 1301. Ipswich Dom Boc.

They declare, amongst other things—first, that the usage is, that the portman-motes should be pleaded before the bailiffs of the town.

Edward I. That pleas of the crown should be pleaded on the same day with the portman-motes.

Ipswich
Dom Boc.

That pleas which were pleaded by gage and plēdge between persons *resident and dwelling* in the same town, be pleaded on two days in the week.

Pleas between *strangers*, called Pie-powdrous, should be pleaded daily, if the parties were to pray such adjournment ; and that pleas in fair time, between *strangers* passing through, should be pleaded hourly.

That no woman should be allowed her essoign.

In writs of right, the tenant was to be summoned by *two freemen* of the town,—that is, *liberi homines*, not freemen of a corporation, according to the modern use of that term ; —and the issue, if the summons be denied, was to be tried by the dozeine meyn—that is, by twelve good and lawful men, to be chosen by four good and lawful men, who were to be the elisors—and who were to be amerced if they did not attend.

From this passage, it is clear that the electors must have been *resident*, and within the jurisdiction of the court—as otherwise, they could not have been amerced. It is also directed, that there should be 24 jurors on the pannel.

In the provisions which relate to pleas respecting lands, &c., “the terre tenant was to be summoned by *two freemen*.”

In pleas of abatement of fresh force, if the disseisor prosecute within 40 *days*, the bailiff is directed to seize the tenement, and deliver it to the next *two neighbours in ward*. This also shows that these provisions relate to the local property and habitation of the individuals.

Respecting pleas of nuisance of frank-tenement, the plaintiff must proceed within 40 days—a period frequently occurring in this book ; and the inquest is to be taken by 12 *good and lawful men*.

When a person has committed waste, he should be summoned before the bailiffs by two *free and lawful men* ; and if the party find surety to redress the waste, upon the view and testimony of *good men*, at a day assigned him by

the bailiff and the good men of the court, he should be there-upon received.

Edward I.

Ipswich
Dom. Boc.

Provisions are also made respecting the examination of married women upon alienations made by their husbands. And the charter of gift was to be enrolled *in full court, before the coroners and good men of the town.*

Tenants for term of life, or for years, were to be summoned by two burgesses of the town; and if they did not find main-prize, they were to be amerced. It was likewise ordained by the *common assent of the town*, that the forfeitures should be levied for the *common profit of the town*—and were to be delivered to *credible persons*, who were to answer *to the commonalty, and not to the sole profit of the bailiffs of the town.*

That the burgesses might devise their tenements on their death-beds; but the will was to be proved within 40 days, before the bailiffs. And that the executors, in default of their execution of the will, should be summoned at the place *where they should reside and dwell* in the town; and if *foreigners*, at the tenement devised.

This entry shows clearly that the burgesses possessed tenements within the town; and the distinction is made between the executors who *reside and dwell* in the town, and those who *dwelt* out of it; and are therefore called *foreigners*. When a person was summoned at the portman-mote, and after giving *pledge*, came not, then he was to be amerced—which could only be effected against a person *resident* within the jurisdiction.

If any of the bailiffs were assaulted in the presence of *the good men of the town*, the offender was to be sent to prison according to the award of *the good men of the town*, for the offence towards the *commonalty*.

Wardens were to be appointed, to take care that the ordinances of the town respecting the markets were observed, for the *common profit of the town*.

That no *re-grater, foreigner, or stranger*, should go beyond the bounds of the market, to forestall, &c. And that no foreign merchants, called "*pedlars*," should purchase before 10 o'clock.

Edward I. Execution for debt was directed to be made, *for persons resident and dwelling*, according to the custom of the county. But if at the suit of foreigners, as by merchants of foreign countries, more speedy distress was to be made for levying their debts or damages, than for such as *were resident and dwelling within the town*, or in the adjacent country, without having regard to the period of *forty days* for keeping the distresses.

Ipswich
Dom Boc.

Cap. 36. Chapter 36 recites, that evil-disposed persons had purchased merchandise, from the hands of merchants and other strangers, and had delayed payment, to the discredit of *the town, and good people there dwelling*. And, *that the good people of the town, by their unanimous advice and assent*, ordained, "*that no town's person, or any person dwelling in the town, domestic or stranger, should delay the payment for any goods or merchandise.*" And if any act otherwise, the bailiffs might make immediate distress, without regarding the 40 days previous to the distress. And if the *purchaser was a burgess of the town*, and should have nothing in the town whereby the bailiffs could distrain, then such purchaser should be, by the bailiff *and good men of the town*, forejudged of *his freedom* in the town for *a year and a day*—from all manner of merchandise, which, in the mean time, he would have made, by reason of *his freedom as a burgess*: and should not be reconciled to the franchise of the town, until he had found good and sufficient surety. And if any person in the town had been damaged by such wrongful detainer, he and his surety were to answer for, and restore the same: the surety *being enrolled on the common roll of the town*.

If a *foreigner* should be *dwelling* in the town, and delay a merchant of his payments, he should be forejudged, by the bailiffs and good men of the town, from making any kind of merchandise.

Cap. 37. In chapter 37, merchant strangers and their hosts are mentioned—the former being directed to be cautious that they employ good and *lawful* hosts.

And if merchants sell without acknowledgment being

made before the bailiff, then the merchants should have the best recovery they can.

Edward I.
Ipswich
Dom Boc.

In pleas of tenements it is provided, that if the witnesses be *resident and dwelling* in the town, so that the bailiff of the court might cause them to come before them, it shall be then tried; but if the witnesses be *foreigners*, so that the bailiff cannot do so, then the proof should not therefore be delayed, any more than if the witnesses were dead.

Every *son* of a burgess who should be heir to his father, was to come into full court within the first 40 *days* after the death of his father, and be sworn to the franchise; otherwise he should be removed from every court in the town, until he should have so done.

The *view of frank-pledge* was to be always holden in the town, in the week of Pentecost; and the purprestures *presented* at the same view, should be redressed and amended, by view of the bailiffs, and of the chief pledges (*presenters*,) within the first 40 *days* after the said week of Pentecost.

Here we have distinct proof that the jurors, or presenters, were the chief pledges.

Burgesses' widows, whether the burgess be a peer or commoner, should have the capital messuage of her husband in free bench, or a moiety of his lands in the town.

If a burgess, denizen in the town, marry a foreign woman, and she survive her husband, the woman should enjoy the franchise of the town, so long as she should continue a widow.

That no terre tenant in the town should do homage to the chief lord, for any tenements which he holds in the town, especially for that which is holden purely *in free burgage*.

That no *foreigner* should distrain his tenant in the town, without the bailiff—because the bailiff ought not to allow that a distress be anywhere put, except in a place within the town; where the bailiff can in due form make deliverance, *by gage and pledge, if necessary, according to law and reason. But it is lawful for such burgesses, denizens of the town, paying scot and lot, to distrain their tenants in the town, for rent in arrear, at any time, without a bailiff; because if they put their distresses elsewhere than they ought to do, they*

Edward I. are more liable to be distrained, and more amenable to the bailiffs of the town, than *foreigners*.

Ipswich
Dom. Boc.

And it was ordained by the *common council of the town*, that no person, unless he be a burges, denizen of the town, and a peer and commoner, should be the host of merchant strangers.

By the *unanimous consent and assent of the town*, it was provided, that no burges of the town, domestic or stranger, should be impleaded without the borough. If any one plead thereto, he should be admonished by the bailiffs and two burgesses of the town. That every burges should sue in the town for his right. And if after such admonition, he sue forth his plea, he should be summoned by a sworn bailiff, and *two burgesses* (before, it was two freemen), at the portman-mote; and, if forejudged by the bailiff *and good men of the town*, he should be in full court *forejudged of his freedom in the town, and be adjudged a foreigner* (here the meaning of foreigner is unquestionable);—he shall not be restored to his freedom, unless it be by making a fresh fine to the *commonalty*, for having his freedom again.

It was ordained by *all the commonalty*, that no foreign merchant should be *admitted a burges, if he inherit not a tenement in the same town*, where he may be made amenable to justice, and distrainable at the *suit of the commonalty*.

If any one, after he should be admitted a burges, alien his tenements in the town, and convey away his chattels out of the town, and will not remain at *scot and lot*, nor aiding to the town, as a burges ought to be, his freedom should be revoked by the bailiffs, coroners, and *good men of the town*. And if he, or any in his behalf, should be discovered trading in the town, after he should have so foreborne to contribute aid to the town, his customs should be taken as from a foreigner. But it must not be understood by this constitution, that it was forbidden to admit as burgesses, knights and country gentlemen, *who might be partial to reside in the town*; yet to such persons, the freedom of the town should be granted only for the term of *their lives*.

It was also agreed by all the *commonalty*, that if any

burgess of the town should discover the secrets of the town, whereby the franchises might be infringed, such burgess should be summoned to appear before the bailiffs, coroners, and commonalty, to answer concerning the same; and if convicted, should be forejudged of his freedom.

Edward I.
Ipswich
Dom Boc.

By the common assent of the town, there should always be in the town, 12 of the most wise and loyal, sworn to govern and maintain the laws and rightful usages of the town, and on behalf of the commonalty, to ordain what shall be for the common benefit. And because the "*twelve jurats*" would be employed for the state and honour of the town, therefore the commonalty granted to the jurats, the common meadow called Odenholm.

Different payments for wines were made by burgesses—burgesses' denizens, at scot and lot—foreign burgesses, not at scot and lot (as a peer and commoner)—and foreigners. Twelve porters or bermen—that is, the men of the port or borough—are mentioned.

The four great divisions of the town, are described by the four *leets* or *wards*,—the east gate leet, or ward: the west gate leet, or ward: the south gate leet, or ward: the north gate leet, or ward. The boundaries of each of them are distinctly described, and the nature of wards and courts leet fully explained.

Wards and
Leets.

In London, every *ward* had its *ward-mote*; which Lord Coke states, was the same as the *leet*; all the functions of the ward-mote, being the same as those of that court. And at Ipswich, we find they were so called; and the town divided according to their jurisdictions.

As illustrative of the use of the term "*men*" in ancient documents, after the extensive extracts we have made from the Dom Boc of Ipswich, it may be worth while to mention, that in this same year, the *men* and *burgesses* of Ipswich had a charge made upon them: from which it is impossible not to infer, that those terms were respectively descriptive of the *inhabitants*: the former, of those who had not been sworn as burgesses; the latter of those who had been so sworn, and therefore were called *burgesses*—an explanation

Men.

Edward I. necessary to be borne in mind throughout the progress of this inquiry.

We find also in the books of Ipswich, a list of the names of Foreign Burgesses. *foreign burgesses*, who were only made for the terms of their lives; and, as it is stated, principally after King Edward re-delivered the town to the burgesses at fee-farm.

They were those who had not originally lived within the town, but who (as stated in the extract we have before cited) were *partial to reside there*. They were made for the term of their lives only, which if taken literally, would appear a singular provision; but it in truth meant, that they were not received as burgesses generally, or entire burgesses, but only for the purpose of exempting them from the dues and customs of the town, for their own lives; and therefore their children would derive no advantage of burgess-ship from them.

In consideration of such exemption they were to pay scot and lot, and the usual fines upon their admission. Many were made in that form. Others were made upon the payment of a yearly sum for themselves and their villains:—and they were all sworn. Others were, on payments made, admitted *to the guild*; and amongst them a female; but these do not appear to have been sworn. They were, therefore, in all probability, only admitted as members of the guild, and took no oath; for a woman could not be a burgess, nor be sworn to her law, as we have seen before from Bracton and Britton. Another person appears to have been made a *burgess*, and a *guild brother*, marking the distinction between the two. Some were merely allowed to be free of toll, upon yearly and other pecuniary payments. This was little more than a composition for the toll, and probably explains the payment for the granaries.

Comments In these extracts from the records of Ipswich, we have a full description of the usages and customs of this ancient town, at the early period upon which we are commenting; and the reader cannot fail to observe, that we have here a perfect specimen of the use and application of the Saxon laws down to this period. We find the leading distinctions between *free men* and *villains* clearly recognized—also the local juris-

diction of the borough, as distinct from the county, clearly Edward I. marked by the limits and divisions of the borough, and not extending beyond them—we find the principal police and government of the town transacted at the *leets*—the full *burgesses* distinguished from the other people by their *belonging to the place*, as contradistinguished from *foreigners* or *strangers*, as being *sworn*, and possessing tenements within the borough and the jurisdiction of its courts, by which they could be summoned and distrained. We also find that those who part with their tenements, and are no longer householders, cease to be *burgesses*, and are treated as *foreigners* or *strangers*. It is likewise expressly stated, that the juries (the 24, the 12, and the dozein men) were sometimes called the *chief pledges*—sometimes the *jurats*—and *presenters*; and that they had entrusted to them the presenting of all grievances and nuisances in the place, as well as the general care and superintendance of the town. We also perceive distinctly the traces of the gage and pledges:—the incapacity, according to the law of the leet, of women to be *burgesses*, though they might enjoy some of the privileges:—and finally the absolute necessity of *residence* to constitute a full *burgess*;—so perfectly corresponding with the general law of the court leet, where *resiancy* was the requisite qualification of a suitor.

The *common roll of the town* is also mentioned:—and the system of responsibility of the *hosts* according to the Saxon laws. Nor must we forget, that although no right of *burgess-ship* in respect of *burgage tenure* has ever prevailed in Ipswich, yet it is evident that the whole town was held by *burgage tenure*. Every thing connected with *burgess-ship* seems to depend upon the payment of *scot and lot*, and the being *sworn* to the town. All the funds, *finés*, *amerce-ments* and *forfeitures*, are repeatedly declared to be for the common profit of the town; every thing was to be done by the common assent of the town and the *commonalty*:—under the names of “the good and lawful men”—who being the *sworn men* (for otherwise they were not *lawful*), were the *burgesses*.

The freemen also—required by the law to be sworn

Edward I. were therefore *burgesses*, and attended at all the courts; every thing being transacted by and before them in the general assembly of the people called the *portman-mote*, or the meeting of the *men of the town*:—which latter expression does not apply, as we have had occasion to observe before, to every man who lived in the town—for some might be foreigners—religious persons—the villains of other lords—women—minors, &c.;—but to the *freeinhabitants—denizens—paying scot and bearing lot—sworn and enrolled—and such men* were the real, full burgesses of Ipswich.

Nor should we close these comments without again observing, that the *burgesses* were separate and distinct from the *brethren* of the *guild*. And it must be remembered, that throughout these minute and detailed extracts relative to Ipswich, in which the commonalty are frequently spoken of, there is no trace whatever of a corporation.

Our extracts from the documents of the city and university of Oxford, and Ipswich, have occupied so large a space, that we must be content briefly to pass over many of the local documents of this reign; though some few will require particular observation.

Wareham. 1274. A view of frank-pledge, with infangthef, gallows, pillory, assise of bread and beer, at *Wareham*, were certified as belonging to Gilbert de Clare.

Tavistock. 1281. The same claim was made by the Abbot of *Tavistock*.*

1282. The same for the borough of *Totness*. And the king is stated to have confirmed the charter of King John.

Cockermouth. 1292. In the 20th Edward I., the same privileges were claimed for the borough of *Cockermouth*.

Bath. In the third year of Edward I. eleven charters are enumerated in the calendar; one only requires mention, which is a grant to the Bishop of Bath, that all his “citizens and “men of *Bath*” and their *heirs*, should be free from toll.†

Hereford. In the same year, the bailiff of the city of *Hereford* was committed to the Fleet, for a sum due from the *citizens* of Hereford.

Wycombe. 1280. In this year, *Wycombe* was in the hands of the crown; and

* Plac. Cor. apud Exon.

† Rot. Cart. 3 Edward I. n. 3 and 5.

the steward or bailiff of the liberty received the profits of the manor. Edward I.

The king granted that the town of *Berwick** should be a free borough; the *men* of the borough *free burgesses*; and that they might have all the privileges of a free borough. Berwick.
1274.

We must note here, that considering the other documents of this period, no mistake can possibly arise with respect to the real meaning of the term "*free burgesses*," nor an opinion be for one moment entertained that it imported a member of a corporation:—whatever unjustifiable inferences to that effect, may have been drawn from it in modern times.

The provision, that Berwick was to have the liberties which belong to a free borough, clearly imports, that they were at that time, general to all boroughs; and were well known and defined.

The grant of a guild-merchant, is also distinct from that of a borough. After which follows this clause—"So that no one who is not of that guild, shall make any merchandise in the borough, unless with the consent of the burgesses;" a provision perfectly reasonable, inasmuch as it would be to the injury of the *burgesses*, that *foreigners* coming to the town, should make advantage of their merchandise there, without the consent of the burgesses, who had to pay and bear the common burdens of the town.

The burgesses were to elect from themselves annually, a mayor. And the usual privileges are added—that they were not to plead without the borough,—that they were to have return of writs;—that neither the sheriffs nor the king's bailiffs nor ministers should interfere there;—with the usual freedom from toll, passage, &c. The provision in Glanville, as to residence for a year and a day, without claim, is also included, with some other more specific provisions on that head;—as that they should *dwell* and hold land there—should be in the guild,—be in lot and scot with the same burgesses—should not be claimed by their lords;—should not make trial by battle, but should purge themselves by the oaths of 20 *lawful* men.

And finally that *all* of the borough, *willing to enjoy the*

* 1 Pat. MS. 71.

Edward I. *liberties* and customs of it, should be at geld and *scot* with the burgesses, as often as it should happen that they might be talliaged.

Newcastle-upon-Tyne. 1275. The right of the burgesses of *Newcastle* to bequeath their tenements, is twice recognized; and that they should not plead without the town.

1293. In this year, there was a quo warranto against the bailiffs and community of this place (there being at this time no appearance of a corporation), to show by what claim they had the return of writs, to hold pleas and have a guild-merchant. And that they should not be impleaded without the town, with the other usual privileges.

Afterwards, the liberties were ordered to be taken into the king's hands:—and it appears they were for some time in the custody of a person appointed by the king:—who in 1294. the next year of his reign,* granted a confirmation of the charter of the 36th of Henry III., and the liberty of choosing coroners, who were to be sworn in full court.

1299. The lands of *Pampedun* were united to *Newcastle*, for the increase of the town; and were to be held in *free burgage*, in the same manner as those of *Newcastle*;† with all customs and liberties there, as elsewhere in the town, and at the same fee-farm; and to constitute thenceforth, one town or borough.

But notwithstanding this express mention of *burgage* tenure, there is no trace of any such right of *burgess-ship* in the borough.

Dunwich. 1279. There is a grant to the men of the town of *Dunwich*,‡ to hold the town to them and their *heirs* at fee-farm.

1293. But in the 21st of Edward I. it was seized into the king's hands; and the court gave judgment, that the king's *sheriffs and bailiffs of the county, do execute all royal offices in the town of Dunwich, like as in the body of the county of Suffolk.*§ This is an express authority to confirm the doctrine we have before asserted, that all borough rights and jurisdictions depended upon their exemption from the jurisdiction of the sheriff; and that as soon as they ceased to be boroughs, they fell again under the jurisdiction of the sheriff.

* Rot. Cart. 22 Edward I. n. 32.

† Rot. Cart. 27 Edw. I. n. 32.

‡ Rot. Pat. 7 Edw. I. m. 26. 1 Pet. MS. 67.

§ Mad. Fir. Bur. 154.

So also the citizens of *Lincoln*, complaining of foreign ^{Edward I.} merchants trading in *neighbouring places*, to the hurt of the ^{Lincoln.} city,—the sheriff is directed to remedy this for the future, as being a thing within his jurisdiction.* That the privilege of exemption from suits of shires and hundreds was considered a valuable acquisition, may be collected from the memoranda of the Exchequer of this year—where it is directed, that ministers of the Exchequer should be exempt from suits of shires and hundreds, as long as they applied themselves to the business of the king. And in the succeeding year, the keeper and ministers of the market of Lincoln, were declared exempt from talliages and watchings with the other citizens.†

That the same exemption accompanied the exclusive ^{Chichester.} privileges of the ecclesiastics, may be inferred from this fact, amongst a variety of others, that the Bishop of *Chichester*, in ^{1278.} this year, had a grant, that all his men should be free from suits of shires and hundreds; and that he should have view of frank-pledge, infangthef, &c.

The county palatine of *Chester*, was in this year vested ^{1272.} in the crown. And in the 6th of Edward I., the *commons* ^{1278.} complain that they are impleaded out of their county, against their usages and free customs, which they have been accustomed to hold under King Henry, the father of their present king; and under Rondulph, formerly Earl of Chester.‡

It is impossible that the *commons* of Chester, claiming the right of being impleaded within their own jurisdiction, could be any others than the whole *free inhabitants*, duly sworn, and therefore the *lawful men* of the county; for a partial exclusive jurisdiction, applicable to some of the lawful inhabitants, and not to the others, would have been an impracticable provision;—and we shall see by other documents, that this privilege of being impleaded in their own courts, and within their own limits was granted to the *burgesses*; therefore it is clear that the *commons* and *burgesses* were the same class, and were such “inhabitants.” Indeed these, and many other privileges granted by the early charters, would be unrea-

* C. B. Rot. 36. 3 Dyer, 279. B note.

† Mem. Scac. Hil. T. 2 Edward I. fol. 2 et fol. 3.

‡ Pet. Parl. n. 24 p. 6.

Edward I. / sonable and inconvenient in the highest degree, if they were not to be enjoyed by the general body of the *inhabitants* of the place.

In a document of the 3rd of Edward I., the Abbot of Cerne claims a payment from his *men inhabiting* within the *decenna* of Melcumbe:—which shows, amongst a variety of other documents, the actual practice of the doctrine of the tithings and decenna.

1278. In this reign, we have also another distinct instance of the full extent of the jurisdiction of the sheriff's tourn. The men of the Abbey of St. Augustin, of Canterbury, in the hundred of Kingisto, complain that the *hundred* was ancient demesne, and was not accustomed to be called in judgment; but that the sheriff of Kent had distrained all the *decennaries* of the *barony* of the abbey in the hundred, to come before him in the county, to answer, wherefore they do not present all the defaults of the tenants of 12 years, &c.:—which is against the custom of the hundred. Particularly as the greater part of the *men* of the *hundred* are sailors, serving the *barons of the Cinque Ports* on the sea.

Decennaries.

1282. Evesham Burgages. It appears that *Evesham*, like many other places in which the corporate right of election now prevails, had anciently its *burgages*,—for Tindal mentions a charter in the reign of Edward I., granting lands and burgages in Evesham, thus:—

Carta Edw. R. de terr. et *burgagiis*. Joh. de Twye in Evesham.*

1295. It is said that *Evesham* returned members to Parliament in this year,—Willis expressly affirms it,—and Tindal in the appendix of his History of Evesham, gives the names of Richard de Sodenton, and Robert Wahs, as the members returned. But, as no trace is now to be found of any record of the return; and as Evesham was then a purely ecclesiastical establishment, and exempt from all secular service; the fact is very doubtful, not to say improbable.

Truro. 1284.

Another instance relative to *burgages*, occurs in this reign with respect to *Truro*; the former privileges of which were confirmed in this year. In a document of the 26th of

* Tindal, 174.

Edward I., a person is described as holding tenements in Truro in *free burgage*; but there is no trace whatever of any burgage tenure right in this borough,—nor are there any general body of burgesses but the *inhabitants*; who are expressly incorporated by the charter of Elizabeth.

Edward I.
1298.

So also there is in this year, a grant of a *burgage* in Ludlow, with the liberty of the town, by one Samson of Ludlow, cordwainer, to Reginald of Ludlow, butcher,—which describes the subject of the grant “as a certain *burgage* of land, with “all the houses and buildings thereupon erected, with the “curtilage, and all its appurtenances, and *with the liberty of the town*;—which said burgage is in Goalford, between “the land of, &c.”

Ludlow.
1300.

But there is likewise no trace of burgage tenure in Ludlow:—the burgesses being the freemen of the corporation.

This document most clearly shows that the burgage, which was no doubt a house, gave to the occupier of it, the liberty of the town: which is the only mode, as we have observed before, by which the common law, and the doctrine of burgage tenure can be reconciled to the facts now found to exist. Burgage tenure was the universal tenure by which all boroughs were held: and all persons who occupied any house in a borough, were on that ground, paying also *scot* and *lot*, and being *sworn*, the burgesses of that borough—in conformity with the effect of the decision of the House of Commons in the reign of James I.,—“*that of common right, all the inhabitant householders were the burgesses.*”

Burgage
Tenure.

The liberties of *Norwich* were seized into the king’s hands for the non-payment of the fee-farm.

Norwich.
1281.

The king granted that the assises for the county of Norfolk, should be held in his house, which is called the shire-house, in the fee of the *castle* there.

1289.

Two places were determined to be out of the city, and in the king’s hundred of Blofield.—Showing that all which was not within the city, was in the hundreds of the county, and under the jurisdiction of the sheriff.

1302.

The citizens petition the king in Parliament, to have a

1304.

Edward I. grant of the *leet*, and *view of frank-pledge* of Great Newgate, which he had recovered against the prior. And the king also re-granted all their former privileges:—that they should not be impleaded, nor summoned on juries without the city—that they should be free from toll, &c.—and that no sheriff should interfere there.

1306. In the 34th Edward I., the bailiffs, citizens, and commonalty, (Norwich being then clearly not incorporated,) entered into a composition with the prior and convent of the cathedral church of the Holy Trinity, settling their disputes and respective jurisdictions.

Exeter.
1282. There is a singular record relative to *Exeter*,* as illustrative of the tautologous mode of expression which occurs in the documents of that date;—it states that the *burgesses and citizens* of Exeter pleaded that their city was ancient demesne.

Beverley.
1284 The dean and chapter of St. Peter's, York, confirm to the burgesses of *Beverley* and their *heirs*, the privileges granted by the Archbishops of York.—And King Edward, in the 1306 35th of his reign, confirms the charters of the 21st and 56th of Henry III. to the burgesses of *Beverley*, their *heirs* and *successors*, burgesses of the town.

Heirs. We have seen in all the charters of the preceding reigns, and in the commencement of this, that the grants were to the burgesses and their *heirs*, importing nothing but the natural succession by inheritance. But in the reign of Henry III., Bracton had compiled his work, in which he speaks of the “*universitas*” of the civil law, and the doctrines connected with it. That law had long been adopted in England, as applicable to ecclesiastical bodies; and we have before noticed the use of the term “*successors*,” as applied to them. The doctrine of succession had, subsequently to the compilation of Bracton, probably become more generally known.—And therefore we find, shortly after the commencement of this reign, at least in the 12th year of it, in this instance of Beverley, the term “*successors*” added to that of *heirs*, as applied to burgesses; undoubtedly some slight recognition of the doctrine of aggregate succession,

* Pl. Per. Ass. apud Exon.

which in the reign of Henry VI. was fully developed: but Edward I. which we shall hereafter show, was not carried to the extent of fully recognizing the burgesses as incorporated: nor was any change apparently made in their class or condition, notwithstanding this term was added to the description of them.

Thus the king, reciting certain transgressions of the *burgesses*,* for which the town had been seized into his hands, restored it to them; and granted that they and their *commonalty* might enjoy all their privileges, as they had done in the time of the seizure of their town; so that they and their *successors* should render to the king his fee-farm, with powers to elect a mayor for themselves. Nottingham. 1284.

Lyme was made a free borough in the 12th year of this reign; and the men free burgesses.† And in the same year, two burgesses of *Lyme* went to the king's court on behalf of the *commonalty* of the town. Lyme. 1283.

But that "successors" was not even in this reign constantly used, may be seen from a charter in the 13th of Edward I.,‡ granting to the burgesses of *Franchiseville*, in the Isle of Wight, and their *heirs*, all the free customs which the burgesses of Taunton had, or any other burgesses of Wilton, Alresford, and Farnham. Franchiseville. 1285.

So also the charters of *Plympton* were confirmed in the next year to the burgesses and *their heirs*.§ Plympton. 1284.

Letters patent were granted at this period to the burgesses and *good men* of *Coventry*, authorizing them to take toll of all vendible commodities for three years. And in a subsequent period of his reign, the king granted a similar franchise—but it was "ballivis et *probis hominibus* de Coventre," and not as before, "burgensibus et *probis hominibus*." Coventry.

The mayor and *commonalty* of *Bedford* were called upon to answer, by what warrant they held their privileges—of guild-merchant, *not pleading without the borough, return of writs, and exclusion of the sheriff*. Bedford. 1287.

This king granted, in the 18th year of his reign, a charter Cinque Ports.

* Rot. Cart. 12 Ed. I. n. 51. 1 Pet. MS. 222.

† Mad. Fir. Bur. 138.

‡ Rot. Cart. 13 Ed. I. n. 3. 1 Pet. MS. 223.

§ Rot. Cart. 13 Ed. I. n. 64.

Edward I. to the Cinque Ports—that they should not be placed upon juries, by reason of foreign tenures.*

1293. In the same year, the king wills—that all lands belonging to the *Cinque Ports* should be as free and enfranchised as their other lands.† And that those which were before *gildable*,‡ should remain in the same state; and do the same services that the body freely did with their other lands, which were of the franchise of the port.

These therefore must have been lands without the Cinque Ports, in the county at large, but held by the barons who resided within them—as clearly explained by the following documents.

The barons claimed, that they should not be put upon assises, juries, or recognizances, by reason of *foreign tenure*, against their will.§ This privilege was granted to them by the charter of the 18th of Edward I.,—and was demanded before J. de Berewyk and his fellow-justices, itinerant in the county of Kent. The king in council thus interpreted the charter—“That the barons, by reason of any *foreign tenure*,
“ which they held at the day of the making the charter, as
“ long as their service was required at the ports—and they
“ should do it there—should not be placed in assises, juries,
“ or recognizances. But for their foreign lands afterwards
“ acquired, and to be acquired, they should perform the
“ customs and services as they had been used and accus-
“ tomed—and as other tenants of the same lands and tene-
“ ments, for their lands were accustomed to do.

“ But, although as long as they were *remaining and resident*
“ within the ports, and yielded *the services of the port*, they
“ should be released, and not placed upon assises, juries, or
“ recognizances, against their will:—yet, if they should
“ *remove* themselves to foreign tenements, and *remain in the*
“ *same, without the port*, and not yield *the service of the port*,
“ then they should be placed upon assises, juries, and recog-

* Rot. Cart. 18 Ed. I. n. 87.

† Vide post. 1377, 1 Richard II. Rot. Parl.

‡ That is, their lands which before paid in common with the county at large.
See stat. Henry VIII.

§ Plac. Parl. n. 16, p. 101.

“nizances, as any foreign tenants, notwithstanding they ^{Edward 1.}
claim to be of the Cinque Ports.”

From these extracts, we have some important points clearly ^{Residence.}
established:—first, the rights and privileges to be enjoyed
by those actually *resident* within the ports, and yielding the
service of the ports—that is, doing all the services there,
pecuniary and personal—or in the general language of the
law, adopted in their own charters, *paying scot*, and bearing
lot, by contributing to the general charges of the place; and
bearing, in their due rotation, all the offices and duties to
be discharged by the permanent *inhabitants*.

Another point illustrated by these documents, is the ^{Tenure.}
difficult question of liability for foreign tenure. It appears
clearly, by all the ancient documents—from Domesday*
downwards—that *citizens* and *burgesses, residing* in their
cities and boroughs, had lands out of their limits, in respect
of which they owed service to the particular lords under
whom they held. Of course, considerable difficulties arose
as to the conflicting services to be rendered at the different
places of their residence and tenure. Nor was it easy to
reconcile them. Pecuniary services might be borne wherever
the lands or goods were liable to be assessed; but personal
service could only be performed at one place. *Suit royal*—
or the service to the *king* at the *court leet*—was expressly
provided for by the statute of Marlberge,† to be done only at
one place;—and that, where the party was *principally com-*
morant. The other services also due to the king and the
law—and amongst them, that of serving on juries—should
also, by analogous reasoning, be confined to the place in
which the party was *resident*:—provided he really did the
service there; that being the reasonable ground of his ex-
emption from those duties elsewhere.

And according to those principles the matter was resolved
by the king and council on this occasion.

But—with reference to this service, as well as many
others—a difficulty often arose, as to lands *newly purchased*.
Under the privileged grants of the crown, the inconvenience

* See particularly the part of Domesday which relates to Wiltshire. † Cap 10.

Edward I. and incongruity of the new owners of those lands being exempt from the services to which the former owners were liable, necessarily arose. That difficulty is, in this instance, removed by the decision of the council; which provides, that the privilege under the charter, should apply generally to all lands held by the barons before and at the granting of the charter; and should not apply to subsequently purchased lands, unless the baron continued to *reside* and *do the services within the ports*. If he removed from thence, he lost his local privileges and exemptions, and became liable to perform all public functions in the county at large—and therefore was subject, amongst other things, to serve on juries in assises. Thus the whole of the privileges and liabilities in both cases, depended upon the fact of *residence* within the limits of the place: a doctrine which all the former documents have illustrated and confirmed.

Customals. The several *Customals* of the Cinque Ports now in existence—all of them undoubtedly of great antiquity—afford us a clear insight (if examined impartially, and with a view to the general law of the land, and the history of other contemporaneous municipal bodies,) into the real nature, character, and object of their institution:—and also supply an opportunity of comparison with other boroughs. For there can be no doubt—as will be most apparent from the general import of these customals, ~~an~~ embodying the chief topics of the Saxon and early common law—that these Cinque Ports, —although called by the peculiar name, by which they were united to each other for some purposes—yet were they, in other respects, precisely similar and analogous to the other boroughs in the kingdom.

Sandwich. Of these customals, *Sandwich* appears to be the oldest, and to be properly attributed to this reign. It is said to be 1301. of the date of the 29th of Edward I.

Romney. That of *Romney* was, in the quo warranto against John Gibbon, in 1734,* referred to the reign of Henry VII.

Winchelsea. And that of *Winchelsea*, to the reign of Philip and Mary—but from their contents, it is clear they were all of the same

* 17 Howell's St. Tri. 814.

original antiquity, although some of the copies of them, ^{Edward I.} might have had a later date affixed to them. They are ^{Custumals.} generally speaking, in substance the same, varying only occasionally in expression—and some being, in a few instances, more minute and particular than the others. Where they differ, they afford instances of the inconveniences resulting from the adoption of various usages in different places, ^{Various usages.} notwithstanding their respective charters are in effect the same. Thus, in the Cinque Ports, whose constitutions no doubt were originally uniform, and in the reign of Charles II. one general charter was granted for the whole;—yet, by usurpations and abuses, from time to time introduced, their usages have eventually become different in almost each of the ports.

The *custumals* of *Dover* and *Rye* have no dates. That of *Rye*. *Hastings* appears to have been lost in the last century, after *Hastings*. its production in a court of law, upon the trial of a mandamus, in the year 1736, at the suit of Mr. Henry Moore.*

Only a few extracts of the *Hythe* *custumal* are preserved, *Hythe*. and the rest are altogether lost or destroyed.

In the reign of Edward III., the constable of the castle of *Dover*, ordered each of the mayors of the Cinque Ports, and their two ancient towns, to deliver into his castle at *Dover*, copies of all their ancient *custumals*, which they had enjoyed from their first enfranchisement—that in case of any appeal to him from erroneous judgment in any of the mayor's courts, he, as the judge of his court at *Shepway*, might have a guide to regulate his decisions.

Consequently little doubt can arise, but that there existed in that reign, copies of all the *custumals*, in the possession of the constable of the castle of *Dover*.

Amongst the records of the corporation of *Sandwich*, of ^{1301.} this date, is a MS. in Latin, usually called the *custumal* of ^{Sandwich.} *Sandwich*.† It was originally drawn up by one Adam Champneys, and the MS. at present among the records of

* See 17 Howell's St. Tri. 849; Strange's Rep. 1070; and Seaford Case, Lambert.

† See also Hargrave's Law Tracts, p. 118.

Edward I. the corporation, appears to be a transcript of the original **Customals.** document, and made in the beginning of the reign of Edward IV. Some passages in it are of modern date, being entered by different town clerks since that time. It does not appear who Adam Champneys was. The original is lost; and many of the customs are said to be obsolete—how they became so is not stated—and others prevail at this time.

Sandwich. The following are extracts from the customals of Sandwich, and the other Cinque Ports:

Mayor. First,—as to the manner of choosing the mayor, the serjeant sounds the common horn, and proclaims that *every man of 12 years*, or more, is to haste to the St. Clement's church, to the common assembly. When the mayor of the preceding year, the jurats and the commonalty being assembled, the mayor desires the commonalty to proceed to the elections. The mayor withdraws, and nominates three reputable men, to be put in election, who must all be *natives*, for *no strangers are eligible to the office of mayor*. The commonalty elect one of the three.

Dover. The customal of *Dover* is to the same effect, as to calling the assembly; but silent as to the rest:—except, that the election is to be by the *commonalty*; called also, both in this customal and in that of Winchelsea, the *portmen*.

Rye. That of *Rye*, is like the *Dover*.

Winchelsea That of Winchelsea, directs the election to be made by the **Inhabitants** *inhabitants* in the hundred by common consent.

Romney. In that of *Romney*, the persons to be summoned are the “folk of the town;” who in the *Rye* and *Winchelsea* customals, are called the “indwellers.”

It is clear, that these are all in substance the same:—that the election ought to be at the hundred court, or common assembly; which from other documents, will hereafter be shown to be the *court leet* of the borough; and the persons who were to attend there, were the *inhabitants*; being every man, (*i. e.* every freeman,) above the age of 12 years:—the proper suitors, by the common law, at the court leet:—and the election is to be by the common assent of them all. It appears, that the persons who were eligible as mayors, were

the *natives*, or persons born in the town—as contradistinguished from *strangers*.

Edward I.

Customals.

The mayor was to take the oath of office, which includes the oath of allegiance.

It is also clear, that the court so held was the *court leet* :—as the *jurats* are spoken of, who appear to have been the jury officiating at that court; and who in Dover, are called the *sutatores*, *suitors*, or *jurats*. In the Romney customal, they are described as “the 12 sworn men, who are to keep and govern “the town;” and in one place, the *juries*. In that of Rye, they are described “as the most prudent men of the commonalty.” And in the customal of Winchelsea, “the 12 “sworn men—the most wise in the town—who are to be “sworn to the king, and the commons;” and in another part, “the *jurors*.” It must be remembered, that the jury at the court leet are the king’s jury, and are sworn to the king.

In another provision of all the customals, it is declared, that if any one refused to serve the office of mayor or *jurat*, the commonalty might pull down his chief tenement, and turn his wife and family out of the town; and the *resiant* was altogether disfranchised. This may appear to have been a severe punishment :—but it was in strict conformity with the severity of the ancient common law, as applied to the omission of any public duties. For as we have seen previously, from the earliest periods of our institutions, every man, who did not obey and submit to the law, and its duties, was considered an outlaw, and was—“*ut caput lupinum*;” and in the customals, the mode of “leading out an infamous person to “the furthest part of the franchise;” and that he should there forswear the town and the franchise, is pointed out.

Another provision directs,* that after the bailiff, appointed by the king, is charged, the freemen are desired to assist him in every thing. This was a duty which arose out of the law of the court leet :—the freemen, therefore, here spoken of, are the “*resiants*,”—or “*inhabitants*,” as described in the customal of Winchelsea—or “*portmen*;”—all of which appear by the customal to be synonymous terms, and contradistinguished from strangers.

Inhabitants

* No. 8.

Edward I. The hundreds are constantly spoken of in these customals, and the "men of lawful condition," twelve of whom were to be compurgators of the accused. And it may be generally affirmed, that those ancient documents, are with respect to flight—the 40 days—the year and a day—the holding courts from eight days to eight days—as to bloodshed and hamsoken—pledges—misprision of theft—and the law as to hosts—in strict analogy with the ancient Saxon common law—and the treatises of Bracton, Britton, and Fleta. An observation which may be applied to the ancient bye-laws of all boroughs; which seem to have been originally little more than repetitions of parts of the common law, for the immediate use of those living in the borough.

Burgesses.

It appears also from these customals, that if the mayors misconducted themselves, by giving false judgments or otherwise, the franchises of the town or port were to be seized into the hands of the king, in the same manner as all other boroughs.

Six persons of the most sufficient of each of the Cinque Ports are required to attend at their great court at Shepway.

The free tenements of the freemen are mentioned in the customal of Sandwich, as well as the *houses* of the parties who are to be summoned to the hundred. It speaks also of the view of frank-pledge,—and expressly states, that *every man of twelve years* was to attend at the hundred.

The mayor and jurats have, as another part of the duty at the court leet, the examination of weights and measures.

We have before observed, that passages have been added to these customals by the town-clerks at different periods. In the 43rd section of the Sandwich customal, there is a striking instance of this—"the men or women of the *corporation*," are spoken of:—that word, in fact, not being in use at the period in which the original customal was compiled.

Freemen. We come now to the important clause as to the admission of freemen.

Dover. No provision on that head occurs in the customal of Dover; and, therefore, we must assume that no special regulation was made with respect to it:—the freemen, no doubt, being admitted in the usual course at the *court leet*.

Neither will the regulations as to the admission of freemen ^{Edward I.} in Sandwich be found to contain any thing peculiar, beyond ^{Customals.} the general direction contained in Glanville—the Regiam Majestatem—and in many of the charters granted to boroughs—as well Welsh—English—and Irish:—excepting that at Sandwich (for the passage as to trade is omitted in the Romney customal) the usage appears to have connected the admission more directly with trade than at other places. This may perhaps be accounted for by the circumstance that the strangers who came into the town, were desirous of being enrolled amongst the inhabitants, as they thereby obtained an advantage in their trade, by becoming exempt from those extra charges, to which strangers were liable; and were also at liberty to trade freely.

The whole right to claim admission, it would seem, is ^{Residence.} founded, according to the common law, upon *residence for a year and a day*; and possessing a place or tenement by which he could be distrained. The party is, according to the law of the court leet, to take the oath of allegiance; and to find his pledges; which, throughout the customal of Romney, are called his ~~boroughs~~. ^{"Borrowes"}

He is also, in conformity with the laws of William the Conqueror, to pay *scot and lot*. ^{Scot and lot.}

Upon the principle we have before explained, he is to pay ^{Fine.} a fine or composition to the mayor and commonalty, being his contribution to the common stock. And the whole is to be done with the consent of the commonalty—because, otherwise, they might have imposed upon them a villain, for taking whom, they might be responsible to his lord;—or a suspected or infamous person, for whose past or future conduct they might be liable. But, subject to those objections, *founded upon fact*, the party was both *entitled* and *bound* to be sworn and enrolled, after a year's residence in the place.

It is subsequently added in the customal, that a *stranger* ^{Strangers.} might obtain his freedom in three different ways:—by paying a sum of money as above—by marriage with a free woman, which, it will be remembered, is a mode of acquiring free-

Edward I. dom, founded upon the common law—and by the purchase
Customals. of a free tenement, which is also a ground of freedom
Residence. having the same origin :—but it is afterwards stated, that it
 is a general precedent qualification, applicable to all these
 modes of obtaining admission, that the party has *resided*,
 according to the common law, *for a year and a day*.

It must also be remembered, that it is equally an absolute condition precedent, that a person should not be a villain ;—which, with reference to the law so frequently quoted before, makes the residence of a year and a day, indispensably necessary before the stranger can be admitted. And, upon the same principle, it is added, that such tenements are only free, as owe neither suit nor rent to any one ; for, if the house in the borough was held of any lord ; and belonged to another manor, the tenant might be the villain of the lord, and reside there as such ; and not as free. And then undoubtedly could not, under the law as stated in Glanville and elsewhere, be admitted as a freeman.

The section for making freemen is as follows :—

Freemen. “ The mayor and jurats *may make freemen* in this manner :*
 “ when a *stranger* comes to the town, and carries on there
 “ any useful trade, with decency and reputation, for the space
 “ of a *year and a day*, and is then *desirous* of becoming a
 “ freeman of the *corporation*,† he should come before the
 “ mayor and jurats at a common assembly, on a day ap-
 “ pointed, and with the consent of the commonalty, should
 “ be sworn to be good and true, from that day during his
 “ life, to our Lord the King of England, and his heirs, and
 “ to assist and maintain the state of the liberty of the town to
 “ his power, &c. And he should find *four sureties* for his
 “ true and faithful performance of his oath, and for the
 “ punctual payment of the *lots* and *scots* of the town out of
 “ his personal estate ; he is to put into the common home
 “ 13*d.* for his admission—of which the mayor is to have
 “ 12*d.*, and the common wardman a penny ; he is likewise to
 “ pay a composition to the mayor in the name of the com-

* See writ 4 Edw. III. ; and also the custumal of Rye, to a similar effect.

† This term is clearly a modern interpolation, for the reason before given.

“ monalty ; and to the bailiff, in the name of the king and Edward I.
 “ commonalty, as much to the one as the other. His fine is Customals.
 “ sometimes half a mark—sometimes 40*d.*—according as the
 “ person may be useful to the commonalty in the king’s
 “ service, or on other necessary occasions. The whole pro-
 “ ceedings to be entered in the usual form by the town-clerk
 “ in the book of record kept in the chest, for which he is
 “ entitled to a fee.

“ *Strangers* coming to the town may obtain their *freedom*
 “ *in three ways*, namely, by *payment* of a sum of money, as
 “ above—by *marriage* with a *free woman* :—and by purchase
 “ of a *free tenement*, if he can procure one *within the liberty*.
 “ But the person must first have been *resident* there by *him-*
 “ *self or his wife* or his agent,* for the space of a *year and a*
 “ *day*, and he who has been *once made free*, and has con-
 “ tinued that time in the town, shall not be taken out of the
 “ liberty upon the claim of his lord, even if he be his ser-
 “ vant by contract or by birth.

“ These *adopted freemen* have a right to enjoy all our
 “ franchises within and without the liberty, equally with
 “ those that are *born free* ; and they may have if they please
 “ a patent of freedom, to be in force for three years, which is
 “ the longest term for which such patents are granted ; they
 “ are renewable however, if required.

“ Such tenements only are free, as own neither service
 “ nor rent to any one, and are only liable to the *lots* and Rent.
 “ *scots* imposed on the commonalty at a common assembly.”

The oath at present taken by a freeman, includes the oath
 of allegiance, and is to this effect : Freeman’s
 oath.

“ *I shall be, as I ought, true and faithful to our sovereign*
Lord King George, his heirs and lawful successors ; and the
 state, customs, and *liberties of the Cinque Ports*, but espe-
 cially of this town of Sandwich, to my power maintain ;
 ready to *scot and lot, watch and ward* for the conservation of
 this town, and franchises of the same, and obedient shall be
 unto the mayor and jurats of this town in all things whatso-
 ever, as well concerning the state and reputation of them, as

* That is, some part of his family ; so as to make it his domicile.

Edward I. of this town of Sandwich, and ready to be in arms for defence thereof *against the king's enemies* within the said town, when I shall be thereunto by the mayor and jurats lawfully required.—So help me God.”

Common
seal.

In the Romney, Rye, and Winchelsea customals, the common seals of the town are referred to, although there is no appearance whatever of either of them being corporations, nor could they have been so at the time of the original compilation of their customals.

In Lyon's History of Dover,* it is expressly stated, that the persons who were admitted to the privileges were *enrolled* in the court. And he states afterwards, “that any *resident* “within the franchise, who was of abilities to pay *scot and lot*, and to do *watch and ward*, would appear by the records “of the court, to be admitted into the privileges.”

Notwithstanding it is the clear result of all these customals, that their constitutions were in fact the same; and that they were rather the laws and usages of the Cinque Ports generally, than of any particular place; and notwithstanding, as before observed, Queen Elizabeth granted, and Charles II. confirmed, one general charter to all the Cinque Ports:—yet, we find that in after times, their laws and usages most essentially differed; or at least, various classes of persons have been determined to be the burgesses or barons in the different ports.

Thus, although the persons entitled to the privileges of Dover, are described in Domesday to be continually resident there, “*assidue manentes* ;”—and in Glanville, the freemen were required to be *inhabitants* ; †—and in the reign of Queen Elizabeth, and at sundry periods, it appears by several regulations as to the freeholders, that those only who had free tenements of the value of 40s., were to enjoy the freedom;—*yet freemen, elected and admitted by the corporation, whether resident or not, are the persons who have been declared by the House of Commons to be the burgesses or barons of several of the Cinque Ports*; and they are now so treated and considered.

* Page 221.

† See Glanv. 14.

On the other hand, in Sandwich, not only have such free-^{Edward I.}men been permitted to act as the barons, and burgesses, but freeholders also, whether resident or not, have been considered entitled to enjoy the privileges.

At Rye, the resident freemen, reduced to a very small number, are the barons;—at Romney, the mayor, jurats, and commonalty;—at Hythe, the mayor, jurats, common council, and freemen, including a great number of non-residents;—and at Winchelsea, the mayor, jurats, and freemen being inhabitants. In some of the Cinque Ports, the freedom has been sold for different sums. Yet Lord Coke says,* and no doubt with truth, as appears from the customals quoted above, and the Cinque Port charters, “that the privileges of “all the Cinque Ports are the same.”

MANCHESTER.

That these customs which are stated by Lord Coke to be the same in all the Cinque Ports, were in truth, the same as those sanctioned by the Saxon and early common law; and that the other boroughs of England had also, *customals*, or records of their usages, founded on the common law, may be collected from an instance which occurs of a document in the 26th year of this same reign, relative to the borough of *Manchester*, which purports to be a recognition of the customs of that borough, by the lord of it, who confirmed them to the *burgesses*: and they appear to have been subsequently enrolled, and exemplified in the 21st James I. 1623. As the document is of such antiquity, and curious, we shall transcribe some extracts from it.

Manchester.
1301.

It states, that the burgesses should pay for every *burgage*, 12*d.* by the year, for all service.

It will be remembered that such a payment, and for such a purpose, was frequently mentioned in Domesday; and we have before observed, that every borough had *burgages*; to which also the books of the *brotherhood* of several of the Cinque Ports, frequently allude.

In the Manchester document, the burgesses, and *præpositus*

* 4 Inst. 222.

Edward I. villæ, are mentioned, as well as the *laghmot*. And it is directed, that if the reeve should summon a burgess, and he do not come to the *laghmot*, he should forfeit 12*d.* to the lord, who should have his action upon him, in the *port-mote*.

If any burgess sue another burgess for a debt, and he acknowledge it, then shall the burghreeve assign him a day (to wit,) the eighth:—and if he come not at the day, he shall pay to the lord 12*d.*, and he shall pay the debt, and to the burghreeve, 8*d.* This is in effect, precisely the same as one of the customs of the Cinque Ports.

If any man make claim of any thing, and shall not find bail, or PLEDGES, and afterwards would leave his claim, he shall be without forfeiture. The pledges so frequently referred to in the common law, and also in the Cinque Port customals, are here introduced.

If any burgess in the borough, on the Sunday, or from nine o'clock on Sunday, until Monday, do wound any burgess, he shall forfeit 20*s.* And if upon Monday, or any other day of the week, he do wound any person, he shall forfeit to the said lord 12*d.*

If any burgess shall strive with any man, and for anger strike him, without any effusion of blood, and can afterwards return free to his own house, without any attachment of the burghreeve, or of his servants, he shall be free from any plaint of the reeve. And if he can agree with the party of whom he maketh the fray, well be it:—and if he, the other, can make his peace with the party, by the council of his friends, he may do it without forfeiture to the reeve.

If any man be impleaded in the matter of any plaint, he shall not answer, neither to a burgess, nor to a villain, unless in the *port-mote*, except plaint pertaining to the king's crown, or to theft.

Villainage. These and other provisions in this document, show that the doctrine of villainage was still in full use.

If any man do challenge any burgess of theft, the burghreeve shall attach him to answer at the *lord's court*, and to stand to his evidence.

If any man be impleaded by his neighbour, or by any

Others, and follow the same three court days, if he have witness of the burghreeve, and his neighbours of the *portmote*, that his adversary is in default at those three days, the defendant shall not afterwards make any answer of that plaint. Edward I.

The burgesses ought and may choose a reeve of themselves, whom they will, and remove him. Reeve.

The reader will remember the numerous clauses in charters to this effect;—and Manchester has had a boroughreeve ever since.

Item—No man may bring his neighbour to any oath, unless he have suit of some claim. Nor receive any thing within the town, but by view of the reeve.

Item—Every man may sell or give his lands which are not of his *inheritance*, if need should happen, to whom he will, except the heir will buy it—but the heir ought to be the nearest to buy it.

Item—Every man may *sell of his inheritance*, be it more or less; or all by the consent of his heir:—and if, peradventure, the *heir will not*, notwithstanding, if he fall in necessity, it shall be lawful for him to sell of his inheritance, what age soever the heir be.

Item—The reeve ought to let to every burgess and cess-payer, his stall in the market; and receive for every standing a penny, to the use of the lord.

Item—If the burgess or cess-payer will stand in the stalls of the market, he ought to pay unto the said lord, as much as a stranger; and if he stand in his own stall, he ought to pay nothing unto the said lord.

Item—If any man be impleaded before the day of the *laghmot*, and then cometh, he must answer, and ought not to be *essoigned* without forfeiture; and if it be the first time that he be impleaded, he may have the first day.

Item—The burgesses may arrest men, whether they be *knights, priests, or clerks*, for their debts, if they be found in the borough.

This provision was because the knights and ecclesiastics

Edward I. claimed exemption from civil jurisdiction:—but they were bound to submit to pay their debts.

Item—If necessity fall that any sell his *burgage*, he may take another of his neighbour; and every burgess may let his *burgage* to his neighbour by view of his *fellow burgesses*.

And it shall be lawful for the burgesses to let their own proper chattels, within the fee of the lord, to whom they will, freely, without license of the lord.

Item—If a *burgess* lend any thing to any *villain* in the borough, and the day be expired, he may take a gage unto the said villain, and by his gage shall certify and deliver the gage upon surety unto the term of eight days, and then the sureties shall answer either the gage or the money.

Item—If a burgess do either buy or sell to any man within the fee of the lord, he shall be free of the toll.

And if any of any other *shire* come, who ought to pay custom, if he go away with the toll, and be retained by the burghreeve, or any others, he shall forfeit 12s. to the use of the lord, and pay his toll.

Shire. “Shire” seems here to be used in its original Saxon meaning, as applied to any other division or district.

If any person lend any thing to another without a witness, he shall answer him nothing, unless he shall have a witness:—and if he have a witness, the party may deny it upon oaths of two men.

He that breaketh assise, either of bread or ale, shall forfeit 12d. to the use of the lord. This shows that Manchester was at this time separated from the county, or this would have been inquired into by the sheriff in his tourn.

Item—If any man wound another in the borough, the burghreeve ought to attach him; if he may be found *without his house*, by gage or by surety.

Item—Every man ought and *may answer for his wife and his household*. This is in strict conformity with the doctrine of the manupast in Bracton, Britton and Fleta.

Item—If any villain shall sue any burgess for any thing,

the burges is not bound to answer him, except it be at the suit of burgesses, or of other *lawful men*. Edward I.

Item—If a burges have no heir, he may bequeath his *burgage* and chattels when he dieth to whom he will, saving only the service of the lord.

Item—If any burges die, his wife ought to remain in the house, and there to have necessaries, as long as she will be without a husband, and the heir with her; and when she will marry she shall depart, and the heir shall remain there as master.

Item—If any burges shall die, his heir shall pay no other relief to the lord, but some kind of arms.

Item—If any burges sell his *burgage*, and will depart from the town, he shall give to the lord 4*d.*, and shall go free where he will.

Furthermore, all plaints shall be determined before the *steward*, by the enrolment of the lord's clerk.

The lord then concludes by directing, that all these liberties he and his heirs should keep to the burgesses and their *heirs* for ever, saving to him reasonable talliage, when the king talliages his free burgesses.

In this year, the king confirmed all the liberties and free customs which had been granted in a charter of Henry de Lacy, Earl of Lincoln, to the free burgesses of *Clitheroe* and their *heirs*,* giving them their *burgages* and lands which they had by the grant of the king's ancestors, or the said Henry; and the same privileges as the burgesses of Chester:—together with the farm of the town of *Clitheroe*, its profits and amercements; and right of turbary.

Clitheroe.
1291
1292

It should be remarked, that the burgesses of *Clitheroe* have been held by Parliament to mean "the holders of *burgage lands*."

This king also granted to the whole commonalty of *Can-* Canterbury
1296.
terbury,† a confirmation of their former charters.

And in this reign, the abbot and convent of St. Augustine

* E. Lib. Irrot. fol. 25, 6.

† Rot. 63. Rot. Cart. 26 Edw. I. n. 6. 1 Mad. Exch. 421; 1 Pet. MS. 98.

Edward I. of Canterbury, granted the *aldermanry* of Westgate in Canterbury to an individual.

From which we may infer, that Canterbury, as other documents also show, had wards; and that the aldermen presided over them as in London. Particularly as in another record of the 32nd year of this reign, six aldermen of the *aldermanries* of Newingate—Worgate—Newingate—Radingate—Burgate—Westgate—and the *ward* of Burgate are mentioned.

1303.
Alderman-
ries.

Kingston-
upon-
Hull.

This king also granted to *Kingston-upon-Hull*,* that the town should be a free borough, and the men of it free burgesses, and that they and their *heirs* might devise their lands.

Yarmouth.
1305.

In the 34th of Edward I., the *burgesses* of *Yarmouth* claimed the right to have their town as a free borough, with all the privileges belonging to it; and the right was admitted.

In the 26th, 28th, and 31st years of this reign, the bailiffs of *Yarmouth* claimed to have the *return of all writs*, which the sheriff of Norfolk stated in his return to the parliamentary writ. And it appears that the sheriff excused himself for making no return, by saying, that he had not jurisdiction within the borough of *Yarmouth*, inasmuch as the bailiffs there had the return of all writs, and they had sent him no answer.

London.
1272.

London also partook of the bounty of the crown in this reign. For in the first year of Edward I., upon the petition of the citizens† before the king and his council in Parliament, complaining that malefactors having committed offences in the city withdrew themselves to the town of *Southwark*, where they could not be attached by the officers of the city;—the king granted to them, their *heirs* and *successors*, the city of *Southwark* at fee-farm.

1273.

In a record of this date,‡ the *barons* of London are called upon, as holding the *county* of London in farm, to answer for a default of the under-sheriff.—As London is here treated as a county, this may perhaps be one reason to account for no return of it occurring in *Domesday*, under the head of *Middlesex*.

* Rot. Cart. 27 Edw. I. n. 27.

+ Bibl. Cotton. Faustina 150, p. 214.

‡ Rot. 14.

In the Year Book of this period,* the *mayor* of London is mentioned; and the prise of wine, as well as the profits of the market of London are stated, as being taken by the ministers of the crown,—which being within the time of legal memory, shows that the citizens had *not a prescriptive title* to these privileges. Edward I.
1274.

Upon the patent roll of the tenth of Edward I.,† certain tolls are directed to be collected towards the repair of the bridge of London.‡ And in the 34th year of the same reign, a grant of a similar nature was made to the mayor, sheriffs, and other citizens. In the same year, upon a writ of *ad quod damnum*,§ certain lands in the city were granted to the mayor and commonalty, towards the repair of the bridge.

It appears from the Parliament rolls of this date,|| that the citizens of *London* prayed the king to place them in their original state; to grant to them a *mayor*, and their ancient liberties. They also prayed against *alien merchants*, who carried off their gains, and bore none of the burdens, and who were in the habit of *remaining* in the city beyond 40 days. Which was contrary to the Saxon law, and those of Henry I. and II.¶ and it was answered,—the king was informed that the foreign merchants were fit and useful men, and was counselled not to expel them. 1289.
1376.

Here we again find the citizens of London, as the general body, petitioning for privileges:—and the inference arising from these documents, agrees with that which all the charters and other records relative to London establish—that the citizens were the general body of the *inhabitants*.

The distinction here drawn between the citizens and the alien merchants, tends to confirm the same doctrine—and that the rights and privileges of London, belonged to those who were of the place, and not to aliens or strangers; and that this was connected with *inhabitancy*, and the law as to *resiancy*, which was then practised in the courts leet throughout the country. It is here complained, that these merchants resided Aliens.

* Mem. Scac. Mic. T. 2 Edw. I. f. 3.

† Rot. Pat. m. 18. ‡ 1 Hearne, Lib. Nig., p. 472, 474.

§ 1 Hearne, Lib. Nig. p. 474. || Pet. Parl. p. 55. n. 112.

¶ See post. 1376, 50 Edward III.

Edward I. more than 40 days; that being the period, as appears by Bracton and other authors, for which a person might reside in a place, without being compelled to produce his pledges, and to be enrolled and sworn as a permanent inhabitant of the place.

1297. In the 26th year of Edward I., a charter was granted to the citizens, referring to the former privileges, and confirming their free customs in general terms:—also, that the mayor whom they had chosen, should be admitted in the Exchequer:—and directing that for the future he should be presented to the constable of the Tower. Exemption from pontage and pannage was also given.

Successors. We should observe, that this charter (unlike the former) is granted to the citizens and their *successors*. We have before remarked, in our extracts from Bracton, that the doctrine of the *Universitas* was promulgated in his compilation. And we have seen from many documents, that the appellation of “successors” had been long before given to ecclesiastical bodies. It seems about this period, the term was applied also in some instances, to municipal bodies; although grants to other places were made as before to the burgesses and their *heirs*.

In our extracts from *Fleta*, we shall hereafter see that the term was used in that compilation with respect to the ecclesiastical bodies, together with some of the doctrines more peculiarly applicable to corporations. Still it is clear, that the general doctrine of corporations was not at that time applied to municipal bodies, particularly with respect to elections, or admissions into the liberties of the place. And it would appear, that the adoption of this term was rather the effect of accident than intention; for we find in the succeeding reign, that charters were again granted to the citizens and their *heirs*.

In the close of this charter to London, it is introduced parenthetically, that the city, mayoralty, and liberties, had been long since taken into the king’s hands, who had a *custos* appointed over them, for no less a period than 12 years. This, no doubt, was intended to operate as a re-grant of their

previous privileges; and we find, that in this year they returned members to Parliament.* Edward I.

It was also about this period that the divisions of the city Wards. (originally called aldermanries), began to be known solely by the name of *wards* (as they have been called ever since;) and *ward-motes*, or *courts leet* were held in them:—and certain persons being chosen out of the *inhabitants of each ward*, to form the inquest, or jury, who presented all nuisances, and matters inquirable at the *leet*, to the *alderman*, and assisted him in the general government and police of the ward.

Thus we see, that in London, as in Norwich, Yarmouth, Ipswich, and Canterbury, aldermanries, wards, and leets, were in fact synonymous; and the wards, and ward-motes, continue to this day; as to the original constitution of which, or the nature of the functions of the alderman or the court leet, it is impossible to entertain a doubt.

As one of the distinct proofs that these juries performed a most important office, in giving vent to the real or supposed grievances of the people, we find that in the third year of Edward I., “the juries of the several wards presented to the justices in Eyre, that the mayors and guardians of the city, had been used to load them with arbitrary and unauthorized talliages, and unequal assessments.” 1274.

In the 12th year of this reign, we meet with an occurrence which establishes, that the Tower of London, like the castles in most other boroughs, was out of the city; for the mayor being summoned before the justices in Eyre at the Tower, conceiving he was not bound to go out of the city, formally deposed himself before he entered the Tower gates, and went in only as a private citizen.† 1283.
Tower of
London.

In the following year, a statute was passed, directing that the aldermen should make strict search for offenders, and allow none but *freemen to reside* in the city.‡ 1284.

These freemen at this period, were, beyond all doubt, the freemen of the common law, as contradistinguished from villains:—and not the freemen of any corporation or guild. Freemen.

* Lib. Alb. fol. 116. Norton, 113.

† Lib. Horn; Lib. F. in fine.

‡ Stat. Civ. Lond. Norton, 115.

Edward I. Mr. Norton, in his valuable commentaries upon the history and constitution of London,* from which we have extracted much valuable matter, seems to consider that the privileges with respect to forced lodging, and the residence of foreign merchants, were peculiar to the city of London;—but, as the reader has already seen, the former was an immunity contained in almost all the charters to other boroughs; and the latter formed a part of the general law of the land.

Upon the re-grant of the privileges in the 26th of Edward I., to which we have before adverted, the aldermen, with the 12 jury-men from each ward, chose, or rather *presented* the new mayor;—a mode of appointment perfectly consistent with the principles and spirit of our ancient law.

Present-
ments.

Speaking correctly, the term presentment, and not election, ought to be here applied. A distinction material to be noted:—because from the disregard of it, many of the actual abuses, and the greater portion of the misconceived notions upon this subject, have been introduced.

If election imports an arbitrary will, without reference to the circumstances which ought to have an imperative control over the persons electing, then the term is misapplied to this proceeding;—because it was the duty of the jury at the ward-mote or court leet, to appoint or present many officers, as the important functionaries of the law; such as the constables—the head-boroughs—the beadles—and a variety of others, unnecessary to enumerate. In the appointment of these individuals, they were bound to regard *the most fit and proper* persons for the respective offices; with reference also to the *turn and succession* in which the parties ought to serve. So that it was the bounden duty of the jury, under the solemn sanction of their oaths, to select—appoint—nominate—or elect, (if the term is strictly used in that sense,) the person, who, according to their real judgment and belief, was *the fit and proper individual*; considering upon the one hand, for the sake of the public, the fitness of the party; and upon the other, for the sake of the individual, his liability in proper turn to serve the office.—Thus were the

rights both of the public and individuals secured in this Edward I. reasonable and practical manner, by the oaths of the jury.

Had the simplicity of this ancient system never been departed from, neither would the loose notions of the elective franchise, or the looser principles applied to its exercise, so injuriously prevailed as we have since witnessed. Nor would the introduction of various *usages* in the different boroughs, whereby the whole system was involved in mystery, have opened a door to the tricks and frauds, which in modern times have disgraced the elective franchise.—Neither would there have been any difficulty in checking the baneful influence of those frauds, and restoring the exercise of the elective franchise to the legal influence of responsible sworn functionaries and correct principle, by the resumption of this ancient—venerable—and practical system.

Neither should the statesman—the politician—or the philosopher—overlook the demoralizing effect of the superinduced intricate system, with its concomitant frauds, which has so long existed; nor upon the other hand fail to anticipate the sure and social compact of society, which would arise from the execution of these functions, under the responsibility of oaths in a public court, before the people, who serving in succession upon the juries, would themselves participate in the administration of the laws, and know by their own experience that all was done fairly, and under the control of honest principles. Mr. Norton, in this part of his book,* seems to err in supposing that the persons nominated at the ward-motes, were the council of the aldermen or the mayor. These terms used in their present sense, serve to mislead the judgment, and draw it away from the correct view of the subject.

The notion of a council implies in the minds of most persons at the present day, a notion of discretionary and unrestrained will; in that sense the word is totally inapplicable to the bodies of whom the author is speaking. They had no self will or discretion—they were the juries—bound by their oaths to do what was right, not what they wished. And however minute, upon a superficial view, this distinction

Common Council.

* Page 115.

Edward I. may seem, it is the point upon which all these matters depend. Upon its misconception the abuses which have been the subject of complaint have arisen; and it is only by corrected views upon this subject that these errors can be solidly and permanently rectified.

The probability is, that as the author was mistaken in calling the jury of the wards the "councilmen," so he was also mistaken in supposing that the lists in the *Liber Albus* of 1285, were the common councilmen of the mayor.*

Bristol. Besides the charters and documents of this reign, which we have quoted with respect to London, *Bristol* also had a grant to the burgesses and their successors,† that they should be exempt from murage, &c.; and that they might choose their mayor (and like the grant to the citizens of London), present him to the constable of the castle of Bristol.

A mandate to that effect was issued, reciting, that the king had so granted to the burgesses and whole commonalty of the town of Bristol.

We must remember, that as the mayor of London was directed to be sworn before the constable of the Tower, so here he was directed to be sworn before the constable of the castle of Bristol; and we have shown, that the Tower of London was without the city; it will be seen, that the castle of Bristol was similarly circumstanced.

1272.
Hedon.

Edward I. also confirmed the charter of King John to the *burgesses of Hedon*—the borough at fee-farm—and the same privileges as the city of York:—reserving, amongst other things, the rents of the king's native bondmen. Power was given to hold a wapentake—that they might have a coroner, and all proper officers were to be elected annually from among themselves. That they might have a seal for recognizances of debts; and that no burgess should plead without the town. That they might have *infangthef* and *outfangthef*. That they and their *heirs* might hold their lands freely, and be free of tolls; and that the same burgesses, their heirs and successors, should not be put in assises or juries without the town.

* Lib. Alb. fol. 116.

† Rot. Catt. 28 Edward I. n. 29.

That all *inhabitants*, and those who should be *inhabitants*, Edward I.
 exercising merchandise there, and wishing* to enjoy the
 liberty of the place, should be in *guild, lot and scot*, with
 the burgesses; also in talliages, and all other common bur-
 dens of the whole commonalty. That the burgesses should
 not be convicted by foreigners:—that they might have a
 merchant guild:—and assise of bread. That no clerk of
 the market of the king should interfere. That they should
 have the return and execution of all writs, without any
 impediment from the king's steward or marshal.

It is hardly necessary to observe, though it should not be
 altogether omitted, that all the privileges of this charter are
 clearly of a local character; and seem distinctly to import,
 that they were to be enjoyed by all the *inhabitants who could
 pay scot and lot, and by them only.*

Before we proceed to the consideration of the Welsh and Parlia-
ment
Rolls.
 Irish boroughs, it may be desirable to remark upon a few
 passages which are extracted from the *Parliament Rolls* of
 this reign; in which, however, there is a chasm from the 6th
 to the 18th year.

These valuable records, amongst other things, illustrate Counties
and Bo-
roughs.
 that distinction between counties, cities and boroughs,
 which we have before so frequently noticed. In the 21st 1293.
 of Edward I., the under-sheriff was directed not to im-
 pannel jurors in the county unless they were worth 40*s.*, nor
 out of the county unless 5*l.*; but in *cities* and *towns* (that
 is, towns having separate jurisdictions), it is directed to be
 “as in former times accustomed.”†

As confirmatory of the continuance in practice of the law 1290.
 of villinage at this time, and explaining the term “freemen” Villainage.
 —in a document upon these rolls, but which we have also
 before quoted from the London records, we find, that Nicholas
 de Blundeston, who had demised to Adam de Stratton,
 nine *villains* in Overstratton, for the term of the life of the

* So the Cinque Port Charters, “gaudere volentes,” &c. 1 Pet. MS. 336.

† Plac. Parl. p. 117.

Edward I. said Nicholas, paid to the king a fine for the return of the villains, who had been seized by the king.*

1295. The *sheriff of York* was also commanded to *distrain* certain *villains* of William de Latimer—viz. Robert Alygod, &c. &c. And to have their bodies before the king in 15 days of St. Michael, to answer a plea of trespass.

As we have before seen, that the juries of the wards in London presented to the justices in Eyre, their complaints against the exactions of the mayor and sheriffs of London, 1290. so we find that the *commonalty* of the town of *Gloucester* complained, that the *potentes*—the principal men of the town—taxed them immoderately—and prayed, that the cause and quantity of every talliage levied on them might be ascertained.†

Decenna. As a proof also that the doctrine of the *decenna* was in full force in this reign, we find an entry upon the Parliamentary Roll of the 6th of Edward I.,‡ which states, that 1277. a certain native bondman of a lord had taken sanctuary in the church of St. Buriane, and remained there, with his wife, half a year and more; but the sheriff of Cornwall ordered him to be taken, and to be brought before him, for that he had withdrawn himself from the *decenna*, in which he before was: and the sheriff compelled him to re-enter it, and made him be sworn.

This document, though it clearly shows that the doctrine of the *decenna* was in full practice at this time, apparently requires some explanation. For it is difficult to say, how a native bondman could be liable to be sworn, unless he had resided a year and a day in the place. It would seem, at the first view, that in this instance the party had resided only half a year. Upon the question of villainage, therefore, if this were the only fact, there would be some difficulty, so as to reconcile it with the laws and documents we have previously extracted. But the probable solution is, that the native bondman, who is stated to have been before in the *decenna*, had resided in the place more than a year and a

* Pet. Parl. p. 61. n. 194.

† Plac. Parl. p. 134.

‡ Pet. Parl. p. 14. n. 65.

day before he fled to sanctuary, and had, upon that residence, ^{Edward I.} been previously admitted into the decenna.

The importance of the privilege of the *return of writs*, ^{1306.} which we have seen so often granted, is shown by the following ^{Return of} declaration of the king: ^{Writs.}

The king willed and commanded, that after the grant which he had made to the Earl of Lincoln, to have the *return of writs* in two hundreds, for the term of the life of the said earl:—the king would neither give nor grant any such franchise as long as he lived, if it be not to his own children.

That the sheriff was often in the habit of taking again under his jurisdiction, places which before had a jurisdiction excluding him—and even in cases where he had no legal ground for doing it—is exemplified by a reference to the following extract from the Parliament Rolls.*

Upon a petition of the *Earl of Oxford*, that he and his ancestors had held, by his bailiffs, a *leet* in the manor of Swaffham, in the county of Cambridge, and that, by the negligence of Roger de Walsham, the *sheriff of the county* *usurped and retained the leet*, and the profits thereof received, to the damage, &c.—the leet was restored.

To prove, that at this time ecclesiastical bodies acted ^{Common} under a *common seal*, it was, inter alia, enacted, “that no ^{Seal.} contract of a religious house should be binding, unless sealed with *their common seal*.”†

From the great number of boroughs in Cornwall in modern ^{1304.} times—the total silence of Domesday as to there being any *Cornwall* at that period—and the few charters relative to them which we have been enabled to find up to this date, this county is pointed out as peculiarly circumstanced and worthy of observation.

Its separation, by its peculiar tenure and government, from the other counties in England—the rights which the Duke of Cornwall possessed over it, which, if not to the full extent of sovereign rule, fell little short of the “*Jura Regalia*”—all tend, in some degree, to show its peculiar situation.

* Ret. Parl. p. 192.

† Plac. Parl. p. 217.

Edward I. It is now very difficult, satisfactorily to account for the early paucity of its boroughs, and the subsequent extensive increase of them.

Stannary
Laws.

Moreover one of the striking characteristics of this county, was the establishment of the *Stannary Laws*; and it is by no means improbable, that the exclusive jurisdiction given to the Stannary Courts, may afford the real explanation to the peculiar facts mentioned above. At least, as we have seen in the course of our investigation, that the exclusion of the jurisdiction of the sheriff of the county was the substantial feature distinguishing a borough—so, till a better hypothesis is suggested, it seems reasonable to assume, that exclusive jurisdiction, though arising out of different circumstances, might have produced the same result in this county.

We find, that at this date, Edward I. granted a charter for the establishment of the *Stannaries*,* by which it was provided, that all the stannators working in them, which were the king's demesnes, whilst they worked there, might be free of pleas of natives, and all pleas in any way touching the king's court. That they should not answer before the king's justices or ministers, but before the warden of the Stannaries. And that they might be free of talliages, tolls, stallages, aids, and other *customs*.

This charter was confirmed in Parliament, in the 35th of Edward I., 1st of Edward III, 17th of Edward III., and 50th Edward III.

It will appear, that it is subsequent to these periods that the bulk of the Cornish charters were granted by the Duke of Cornwall to the Cornish boroughs. And as none of the provisions in this original charter are of a corporate character, or tend in any manner to raise the inference, that they were intended to give any corporate powers or jurisdictions—so also it will be found, that the subsequent charters were not grants of incorporation, till after those grants became common in other parts of the kingdom.

* See Pearce's *Stannary Laws*.

YEAR BOOKS.

Year
Books.

With respect to the *Year Books*, which contain the earliest decisions in the courts of law now extant, and which commence in this reign, we would observe generally, that they confirm the doctrines and usages in the ancient laws, and in the charters and customs of the several boroughs.

The officers of the Exchequer* are declared to be exempt from *suits of shires and hundreds*, as long as they are engaged in the business of the king.

It is clear, from this exemption claimed and allowed to the king's officers in the Exchequer, by the judgment of the barons, how important this freedom was, which we have previously seen granted in the charters of Henry II., John, and Henry III.

The inquisitions entered in these Records, appear to be taken by the class of persons to whom we have so frequently referred, "the good and lawful men," and "the free and lawful men."†

Those who wished to trade in *Norwich*,‡ are stated to contribute with the citizens, in talliages and other aids; and the sheriff was directed to make the men holding of the fee of the castle (which would appear, like other castles, to be in other respects, out of the jurisdiction of the city), and all others trading in the city were to contribute in talliages and aids with the citizens.

The exemption of the barons of the Cinque Ports,§ from serving upon any inquisitions, is spoken of generally, without reference to any particular port—confirming the identity of their privileges, for which we have before contended.

And there is a writ to the constable of Dover castle, and warden of the Cinque Ports, to summon one of Winchelsea, to answer for what cause they had taken the wines of foreign merchants in London, and had defrauded the king of the custom.

* Mem. Scac. Hil. T. 2 Edw. I. fol. 2.

† Vide etiam, Mem. Scac. Fol. 3, 5, 10, 34, 37, 40.

‡ Mem. Scac. Mic. T. 5 Edw. I. fol. 6.

§ Mem. Scac. Mic. T. 5 Edw. I. fol. 7. vide etiam Plac. Parl. 21 Edw. I. n. 16.

Edward I. In a writ to the treasurers and barons of Ireland, respecting
 1291. a question of executorship* arising there, it is recited that
 Ireland. the subject could not be inquired of in England; and the barons in Ireland are directed to proceed to hear and determine the matter:—proving the jurisdiction at that time exercised by the King of England over the Exchequer in Ireland.

Hereford. The bailiff of the city of Hereford† was committed to prison for 20*l.*, which the citizens of that city owed.

From this case, as well as the one quoted before, relative to Dunwich, in the 54th of Henry III., it appears, that the issues of the city belonged to the king; and that the payment of them was enforced by proceedings in the Exchequer, against the bailiff alone.

London. The mayor and other citizens of London, came before the barons and admitted, that Bartholomew, the keeper of the Exchange of London,‡ and other officers of the Exchange, should not contribute with them, as long as they are officers of the Exchange, for any talliage in any case, &c.; and that they should not be compelled to *keep watch with the same citizens*, but when they were willing.

The mayor and citizens are here mentioned, not as corporators, but with reference to one of those duties which arose out of the general law before adverted to, namely, the keeping watch and ward—a duty to be performed by the resident householders.

There is also the following entry in this year, as to the tellarii, or weavers of Oxford—

Oxford. Whereas, our lord King John, the grandfather of the king; by his charter, granted to the tellarii of Oxford, their *guild*, with all their liberties and customs, which they had in the time of his grandfather, King Henry, &c., and in the time of his father: so that in every year, they should give from thence to the same King John, one mark of gold; and that no one should work at their craft, within five miles round the borough of Oxford—as they were used to have this custom

* Mem. Scac. Trin. T. 20 Edw. I. fol. 22.

† Mem. Scac. Mic. T. 3 Edw. I. fol. 3.

‡ Mem. Scac. Pasch. T. Edw. I. fol. 3.

in the time of Henry, his father, and grandfather: and at that time, the tellarii were 60 or more in that town; and they were now come to such poverty, that they were scarcely *fifty* in number: so that they had not, for a long time, answered for the said farm of a mark, nor have they at this day from whence they can answer:—The king, pitying their want, pardoned to them that rent, and granted to them, that for the future, the rent of the king, yearly, by the hand of the *mayor*, and their *bailiffs* of Oxford for the time being, should be 42*s.*, &c., as long as it should please the king.*

It has been observed before, with respect to the charters of ^{Guilds.} King John, that the *guilds* were separate and distinct from the municipal bodies of the boroughs, and here there is a strong confirmation of that assertion; for it is impossible that the weavers here mentioned, being at their greatest number only 60, could be the municipal body of the town. And it seems from the whole case, that they were only a few persons belonging to a particular craft. The borough, mayor and bailiffs of Oxford are also mentioned; but nothing relative to any corporate rights.

That the men and tenants of ecclesiastical persons were free from *geld*, appears from a writ in the *Year Book*,† whereby the sheriff of Surrey was directed, to permit the men and tenants of the Prior of Merton to be quit from the levy of a common fine upon the *commonalty* of that county, because they were not *geldable* in the county.

The entry recites‡ that the tenants, and men of the Prior of Merton, in the county of Surrey, were not *geldable*, nor have heretofore ever been amerced on the iter of the justices in the said county, with the *commonalty* of the same county, nor contributed to their amerciements; and the barons heavily distrain the same men to contribute with the *commonalty* of the same county to a certain *common fine*, which the same *commonalty* have made for many offences, before the justices last travelling, to the injury, &c. The king commands the

Prior and his tenants not geldable.

Commonalty of the county.

County fined.

* Mem. Scac. Mic. T. 21 Edw. I. fol. 4.

† Mem. Scac. Mic. T. 10 Edw. I. fol. 11.

‡ Mem. Scac. Mic. T. 10 Edw. I. fol. 11.

Edward I. barons to acquit, &c., of the same contributions, the same prior, his *successors, men and tenants*, as their *ancestors* have heretofore been quit in other eyres.

This record establishes some important points:—first, that the tenants, and men of ecclesiastical possessions were at that time, generally exempt from lay charges:—secondly, Geldable. that all other persons in the county were *geldable*, or liable to pay to the common burdens of the county:—thirdly, Common- that the general body of the county, are called the “*common-* alty.” a term in subsequent times, so absurdly applied by Dr. Brady and others, exclusively to bodies corporate:—fourthly, that the body of the county were liable to one common fine, although it is clear they were not incorporated, nor could be considered as a corporation.

Hanse There is also an entry of an agreement between the *mer-* merchants. *chants* of the German *hanse*,* commorant in the city of London, and the citizens, concerning the repair of the gate of Bishops-gate.

1. That the merchants and their associates, should pay 200 marks towards the repairs, and should in future repair the same as often as should be necessary; and should bear a third Ward. part of the *ward*, which ought at proper times to be kept for the defence of the gate, at their expence, with their men; and the *mayor and citizens* of London, should bear *two-thirds* of such ward, &c.

2. The mayor, &c., agree that the said merchants should enjoy their former privileges; and as far as concerns the citizens, that *murage* should not be exacted from these merchants; and that the corn imported into the city, may be Forty days. sold by them in hostels and granaries for 40 *days*, and for the *time of their residence*, unless their residence be at any time expressly prohibited by the king, or the *mayor and citizens*, on account of the dearth of corn, or other necessary cause. They agreed also, that the said merchants might Alderman have their *alderman*, as in times past, so that such alderman of the of the hanse mer- be of *the liberty* of the said city, and on his election *presented* chants. by the merchants to the mayor and aldermen of the city, so

* Mem Scac. M. T. 10 Edw. I. fol. 11.

that he take before them an *oath*, that he would in *his courts*, Edward I. administer justice to all persons whomsoever, and that he would faithfully execute his office, maintaining the rights and customs of the city.*

The merchants also consented that they and their *successors* might be distrained by the *mayor, &c.*, for the repair and ward aforesaid. And these concessions were transcribed upon the rolls, and under the seal of the Exchequer, and were to be delivered to each party.

This important record will illustrate some parts of our early institutions, to which we have before referred. We have seen that all persons *residing*, or *commorant* within any place, beyond *forty days*, were bound to be there sworn to their allegiance:—to contribute to the public burden of the place, pecuniary and personal, by paying *scot*, and bearing *lot*:—and if they did not at the end of a year, they were liable to be amerced. For the same reason also, if a villain lived a year and a day within a place away from his lord, he became free; because he also was bound to be so sworn, and to bear the same burdens, which would be incompatible with his situation as a villain. So also foreigners were, after the same lapse of time, partially subject to these liabilities: and there are many instances where foreigners residing a certain time in a place were directed to be in *scot* and *lot*.

It appears likewise from this record, that the merchants of the German hanse, were *commorant*, that is, permanently resident in the city of London:—they were therefore liable to the common burdens of the place, one of which would be the repair of the gates and walls; and it would seem that, *residing* near Bishopsgate, in order to relieve themselves from general liability to the repair of the gates and walls, and to cover their former arrears, they agree to pay 200 marks for the past, and were for the future to do the whole of the repairs of the gate, and be exempt from *murage*; they are to do one-third part of the *ward* of the gate, the citizens doing the other two-thirds; they are to sell their corn, &c., for 40 days:—As the *inhabitant householders* within the several wards, had at their

* Vide *Mad. Fir. Bur.* p. 138. *Ryley's Plac. Parl.* p. 130.

- Edward I. ward-motes the power of electing an alderman for each ward, so to these merchants, *commorant* in that part of the city, is awarded the similar right of electing an alderman for their ward, so as he be a person *of the liberty* of the city; and the alderman is, like the other aldermen, to be presented to the mayor, and to take an oath justly to perform his duties.
- Fol. 12. The "*commonalty*" of the county of *Cumberland* are men-
- Fol. 39. tioned, and the *good men* of that commonalty;—as well as the "*commonalty of the realm*"—and the "*men of the hundred.*" Different districts are also described as manors.*
- Fol. 24. *Newcastle-upon-Tyne* was seized into the king's hands, because the burgesses had elected a mayor without warrant.†
- Fol. 26. The town of *Worcester* was also seized into the king's hands, because the *men* of the town had elected a coroner without warrant.†
- Fol. 26. The king's manor of *Marlborough* is mentioned, and also the fermers of *Marlebrige*.†
- The town and castle of *Devizes* were committed to custody by the king and Queen Eleanor, with the manors of *Erle*, *Stoke*, and *Halliton*.
- Fol. 27. The mayor of *Sandwich*, for himself and the whole com-
- Cinque Ports. monalty, also claimed an exemption from the jurisdiction of the Court of Exchequer; because by the liberties of the Cinque Ports (generally—and not particularly for *Sandwich*), he was not bound to answer, except before the warden of the Cinque Ports.‡
- Fol. 28. A sheriff was nominated and *admitted*; but it appears that he was afterwards amerced for misconduct.§
- Fol. 31. The bailiff of *Ipswich* pleaded that he could not summon
- Jurisdiction. twelve of the foreign hundred, because his bailiwick did not extend beyond the town: ||—most clearly establishing that the jurisdictions of boroughs were confined within their limits.
- Fol. 33. The bailiff of *Exeter* is stated to have the return of writs.¶

* Mem. Scac. Pasch. 11 Edw. I., et etiam Mem. Scac. Trin. T. 26 Edw. I.

† Mem. Scac. Hil. T. 22 Edw. I.

‡ Mem. Scac. Mic. T. 22 Edw. I.

§ Mem. Scac. Mic. T. 21 Edw. I.

|| Mem. Scac. Hil. T. 23 Edw. I.

¶ Mem. Scac. Pasch. T. 23 Edw. I.

A *native* of the king's, of his manor of *Preston*, is mentioned.* Edward I.
Fol. 34.

The religious and ecclesiastics, not having lay fees, were exempted from the view of horses and armour.† Fol. 36.

In this year, the liberty of the abbot of *Reading* was seized into the king's hands, and the abbot was fined 100*s.*, upon the payment of which the liberty was restored to him.† 1295.
Fol. 36.

And in the 39th fol., the "whole *commonalty* of the kingdom," as well laity as clergy, are mentioned.‡ Fol. 39.

SCOTLAND.

In considering the documents of this date which relate to Scotland, so long the subject of contest in this reign, we should first note, that the 2d statute of Robert I. of Scotland, provides—like our own laws—against alienation of lands to religious houses in mortmain. 1306.
Robert I.

About this period a body of bye-laws, relative to the *guild* or society of merchants, was made by the mayor, and other good men, of *Berwick-upon-Tweed*, to the end that the several bodies convened in one place might have amongst them one will, and one firm and sincere regard the one to the other. 1283.
Guild.
Berwick.

In passing, we should observe, that Lambard derives "*guild*" from the Saxon language, and says, that it signifies a society of religious persons, or those employed in mechanical arts, or merchants; but he does not allude to any connection which they were supposed by some necessarily to have with boroughs, within which however they were generally located.

The first Chapter of these laws says, Forasmuch as no particular congregation of *burgesses* should violate in any thing the liberties or laws of the general guild, or conceive new devices against it, all particular guilds and societies hitherto holden within the borough should be abrogated, and their goods should pertain to this guild. And that they should not presume to keep any other guild except this within the Cap. 1.

* Mem. Scac. Trin. T. 23 Edw. I. † Mem. Scac. Mic. T. 24 Edw. I.
‡ Mem. Scac. Trin. T. 26 Edw. I.

Edward I. borough; but that, respect being had by all the *members* to one head, one society may be kept and observed in all their acts and doings.

The term “burgesses” appears to be introduced in this chapter only as a description of those inhabitants of the borough who were members of the guilds:—it certainly was not used for the purpose of asserting that all the burgesses were members of the guilds:—because it refers to the particular congregations of the former guilds and societies, which included those only who were desirous of belonging to them, and which were for the future all to be absorbed in the general guild of *merchants*—as it is expressly called—*not of burgesses*.

It seems difficult at this day to account for the power assumed by the mayor, and the other framers of these laws, of abrogating the other guilds—of creating a new one—and of appropriating to it all the goods of the former guilds. And many other of the subsequent provisions of these laws appear to be illegal—particularly those which require legacies to be given to the guild by the brethren. The 9th chapter supplies a provision for old age and sickness, which seems rather to resemble the rules of the modern friendly societies, than to be connected with the common law.

It is however clear, from the short extracts above, as well as from others which will be mentioned hereafter, that the *guild was perfectly distinct from the borough*;—that the burgesses existed before and independently of it;—and that it was optional in each burghess whether he would embody himself in the guild or not.

Cap. 2. Thus again the 2d chapter states, that all forfeitures (except the king's customs), and such as pertain to the rights and common liberty of the provost and baillies, should pertain to the guild. Which seems to admit, that the rights of the provost and baillies, who were the borough officers, were distinct from those of the guilds.

Cap. 8. Chapter 8 provides, that no man should be received into the fraternity of the guild, for a less sum than 40*s.*, except they were guild sons and guild daughters.

It has been previously shown, that the guild was distinct from the borough. But it seems more than probable, that this law afterwards afforded to corporations—when they were disposed to usurp and exercise exclusively the discretionary and arbitrary power of making burgesses, and likewise desirous of increasing their finances—the precedent for selling their freedom, in the same manner as admissions into guilds were sold. The admission of females, who, by the common law, were exempted from service at the court leet, and never were admitted as burgesses, still farther establishes the distinction between the guild and the borough.

Edward 1.

The laws for sending the brethren's daughters to nunneries—for burying the brethren—and supporting them when in difficulties;—with the exclusion of those who stubbornly contemn the guild;—seem also to be perfectly distinct from the laws of the boroughs.

It nevertheless appears from some of these laws, that there were burgesses, as we have noted above, who were united with them; but this produces no real difficulty, because there can be no doubt but that a man might be both a member of the guild, and a burgess; and in all probability, the greater portion of the burgesses were members of the guild:—but, in considering the subject of our inquiry, it is essentially necessary to keep our conception of the two characters distinct from each other, as essentially different both in origin and nature—the one being derived from the common law, and directly connected with the police and performance of public duties:—the other arising originally from the mutual compact of individuals, first for religious purposes, and subsequently as connected with trade.

There are many laws of the guild which are the same as those of the borough: but more of the former than of the latter relate to *trade*, and are directed against forestalling and monopoly. There are also provisions for keeping the secrets of the guild—against conspiracies to separate or divide it;—for the election of mayor, and four baillies of the guild, and for the appointment of 24 men, who appear to form a body much resembling the council of modern cor-

Edward I. porations:—it being obvious, that all institutions of this kind would, more or less, borrow their forms and regulations from each other.

Cap. 35. The 35th chapter directs, that those who reveal the secrets of the guild, should lose the liberty of the burgh; which seems to be an assumption of power in the framing of these laws, they could not maintain; for inasmuch as it has been shown before, and is proved, both by the ancient and modern usage, that the right to be a burgess, and to enjoy, without interruption, the privileges of the borough, was an absolute right, depending upon certain *qualifications*, and not upon election—it would seem contrary to common right, that such a body as the guild should have the power of ousting him from these privileges, for a supposed injury to themselves;—indeed, it appears as if the framers of these laws were themselves aware of this objection, and therefore endeavoured to bring persons so offending, within some disability of the common law, as by stating them to be infamous; and that they should not use the liberty of that or any other borough, which would undoubtedly be the consequence at the common law, if they really were infamous—although they could not be so severely treated for a fault of such a trivial nature, as that of mentioning the secrets of the guild.

Cap. 45. The 45th chapter recognizes the distinction between brethren of the guild, and burgesses—stating that the forfeitures of stranger merchants, should belong to the brethren of the guild *and* the burgesses of the town.

Cap. 46. The 46th chapter also speaks of burgesses *and* brethren of the guild, dwelling out of the burgh; and prohibits their selling within the burgh, except upon market days. The inference arising from which, we have clearly pointed out, in our observations upon the 108th chapter of the *Leges Burgorum*.

As a farther proof that the guild was more immediately connected with trade than the borough, which united itself with the common law and municipal government, it may be observed, that in the *Chalmerum Eyre*, annexed to the *Regiam Majestatem*, one of the charges against forestallers is, “that they use *guild merchandises*.”

These extracts are sufficient to inform the reader of the ^{Edward I.} general character of the bye-laws, which related to the guilds in Scotland; and will show, that in that country, as well as in England, the guilds were essentially distinct and separate from the legal constitution of the boroughs, ranging themselves under different principles, and having in view, different objects.

WALES.

With respect to Wales, which submitted to the conquering sword of this warlike monarch, we find the following documents:—

The bailiffs of *Montgomery* complain, that the *men* of the town were impleaded for foreign matters.* This seems to assume, that they had an exclusive jurisdiction, and that they were not compelled to plead without the town—a privilege we have seen granted to so many of the English boroughs. Montgomery.
1277.

The king granted that *Lampador* might be a free borough; † that the burgesses might have a guild-merchant, with a hanse and other liberties and customs belonging to it—that no one who was not of the guild-merchant, should make any merchandise there, unless with the consent of the burgesses of the borough. The charter then contains the provision which has occurred so often in those of England, according to the law laid down in Glanville, that whoever had remained for a year and a day in the borough without claim, should not be liable to be reclaimed by his lord. Soc, sac, toll, them, are then given, and all the liberties which the citizens of *Montgomery* had. This charter is, in all its essential parts, the same as the English; and establishes, that this place, as well as *Montgomery*, were upon the same footing, and had all the same distinguishing characteristics, arising as well from the charters, as from the common law. Lampador.
1278.

The king granted also, that the town of *Carnarvon* ‡ should be a free borough, and that *the men* of the town should be free burgesses. That the constable of the castle should be Carnarvon
1284.

* Pet. Parl. p. 6, n. 26.

† Rot. Cart. 6 Edward I. n. 24.

‡ Rot. Cart. 12 Edward I. n. 12.

Edward I. the mayor, sworn as well to the king, as to the burgesses. That the burgesses might choose from themselves, and present to the constable, as to their mayor, two fit and sufficient bailiffs, who should swear to execute their office faithfully. That no sheriffs were to interfere—saving only as to the pleas of the crown. That they might have a merchant guild, —and that no one not of the guild should make any traffic in the town, unless by the consent of the burgesses. The common clause as to native bondmen, and the usual grant as to soc, sac, toll, them, and infangthef follow. Also the provision as to the wills of burgesses, and those who died intestate. And that the burgesses should not be convicted by any strangers, but only by the burgesses. Reference is made to the liberties of the city of Hereford, whose charter was confirmed by many subsequent kings, and by Queen Elizabeth; as well as by Parliament in the fourth year of King Henry IV.

Haverford-
west.
1230.

This king also granted to the burgesses of *Haverford*, all the customs which the burgesses of Cardigan had. That they might elect every year three good and lawful men; out of whom one was to be elected bailiff. Provision is added respecting the wills of the burgesses, and those who died intestate. And also freedom from toll.

It is clear from these charters, that all the Welsh boroughs had in substance the same privileges, which are here recognized as belonging to the boroughs of Cardiff—Montgomery—Lampador—Carnarvon—and Haverford; and that all those privileges were in fact the same as those which the English boroughs enjoyed; as is expressly stated to be the case with respect to Carnarvon and Hereford; and it will be remembered as to the latter place, that many of the English charters referred to its privileges. A general identity therefore, of the rights and privileges of the Welsh boroughs with those of the English, may be reasonably assumed from these records, confirmed as they will be by others we shall hereafter quote.

Edward I.

IRELAND.

With respect to Ireland, we find that the charter of King John to the city of *Dublin* was confirmed in this reign, and the citizens were discharged from sums and fines said to be due to the crown. Dublin.

The charters of Henry III., (including the election of mayor, and freedom from murage, &c., and toll, &c.,) were also confirmed, with other grants at fee-farm.

Waterford and *Dundalk* likewise received charters in this reign.

As those to Dublin chiefly consist in the confirmations of former privileges, which we have seen to be the same as those granted to the English boroughs; we may assume as to Ireland, as we have done with respect to Wales, that the privileges of the Irish boroughs continued in this reign the same as those of the English.

It appears that Ireland was, like Wales, in ancient times divided into *cantreds*, which were analogous to our hundreds. Cantreds.

Thus in the first year of the reign of King John, there is a grant to Hamo de Valeris of Limerick, of two *cantreds* of Hochville, by the service of ten knights.*

In a grant to Thomas Fitz Maurice, the *cantred* of Fontemil is mentioned;—and in one to Lamlekyn Fitzwilliam, the *cantred* of Huliene.

The *cantreds* of Ireland are also mentioned in other records, in the 2nd and 17th of King John.

Many *burgages* in Limerick are stated in these records,— Burgagia. as well as in the 17th year of the reign of King John.†

In the fifth of King John, the city of Limerick was granted to William de Breosa, to hold in ward at will.

And the same of Dublin; 7th John.‡

Some authors have thought that the laws of England were introduced into Ireland before the charter of John, by his father Henry II.;—and this opinion is enforced by the testimony of Matthew Paris, an historian in the reign of *Henry III.*, who writes, that “ Rex Henricus, antequam ex

* Rot. Cart. 1 Joh. m. 13. † Rot. Cart. 17 Joh. m. 8. ‡ Rot. Cart. 7 Joh. m. 5.

Edward I. “*Hibernia rediret, apud Lismore concilium congregandum* “*jussit, ubi leges Angliæ sunt ab omnibus gratanter receptæ,* “*et juratoria cautione præstitâ confirmatæ.*”* Other authorities to establish the same fact, are well collected by Mr. Harris, in his edition of Ware’s Antiquities of Ireland.†

As Lord Coke cites the passage of the Year Book of Richard III., according to which, English statutes did not bind *Ireland*;—and from his manner also of mentioning the same passage in his 12th Report—it might be inferred that this great lawyer was of that opinion.‡ But in Calvin’s case, referring to the same Year Book, he explains the doctrine as applicable only to statutes in which Ireland is not *specially named*. And so he states the rule to be in the fourth Inst.§ He also cites the Year Book of 1 Henry VII., which, as a subsequent decision, overrules the authority of that in the reign of Richard III.—And Lord Coke’s explanation of Calvin’s case evinces his opinion the more strongly, because Ireland, if considered as distinct in government from England, would have been a more apt instance to support his doctrine in favour of the *post nati* of Scotland.|| We do not, however, intend by these observations to offer any opinion as to the controversy respecting the political connection between England and Ireland. It is a subject of too much importance, extent, and delicacy,—as well as foreign to our present pursuits, for us needlessly to encounter; the reader desirous of pursuing the subject, may refer to the 6 Geo. I., c. 5; 22 Geo. III., c. 53; and 23 Geo. III., c. 28: The first of which statutes asserts the legislative power of Great Britain over Ireland, and also the appelliant jurisdiction. By the latter two, that power and jurisdiction are both annihilated.

FLETA.

The first chapter of that compilation of the law which was made in this reign, and passes under this name, commences

* Molyn, Case of Irel. Lon. ed. of 20. p. 24., and Matth. Par. ad anni 1172. Vit. Hen. II. *ibid.* cit.

† See p. 78. See further, 1 Lel. Hist. Irel. 76; and Vaughan, 293.

‡ See 12 Co. iii. 12.

§ 7 Co. Calvin’s Case, 22 b. 4 Inst. 350, 351.

|| Coke’s 1 Inst. 141 b.

by stating, as the principal and most important division of Edward I. society, "that all men are either *free* or *bondmen*." ● Free.

In the third chapter, the author speaks of *native bondmen*, with some of the distinctions we have before noticed in Glanville and Bracton, and which it is not necessary here to repeat, nor further mention, than for the purpose of observing, the same general distinction between the bond and free, was continued to this period. Cap. 3. Natives.

In the fourth chapter, the same subject is pursued;—manumission is mentioned, and the same distinctions to which we have before adverted. Cap. 4.

In the seventh chapter, those who remain in villainage, are contradistinguished from the fugitives, and those who can claim their freedom by the negligence of their lords. Cap. 7. Fugitives.

So that it is clear the doctrines before adopted, continued in full force at this period.

In chapter 20, containing the articles of the Eyre, we find amongst other things, that inquiry is to be made of the fermes of the hundreds, wapentakes, tithings, cities, and boroughs; establishing again, that the cities and boroughs were separate from those other districts into which, by the common law, the county at large was divided—as the hundreds—wapentakes—and tithings. Cap. 20. Fermes.

In the 24th chapter, which speaks of keeping the peace of the county, the persons liable for injuries and robberies, are those who are "commorant" within it. The statute of Henry III., with respect to the keeping of the gates of cities and great boroughs, and the receiving of strangers, is introduced; as well as the inquiry every 15 days, concerning strangers, guests, and their receivers. Also the watch at the gates of cities, and by 12 men in every borough, and four men in county towns, according to the size of the town. Cap. 24.

The 27th chapter relates to *fugitives*, the hue and cry, and the pursuit of the fugitives; as well as the inquiry with respect to the decenna to whom the fugitives belonged; and when they were in free borgh. The town receiving such a person who was not in frank-pledge, is directed to be amerced, unless Cap. 27. Fugitives.

Edward I. he were a knight or a clerk. The amercement of him also in whose manupast he was, is mentioned.

Thus it is evident, that the whole ancient system of the Saxon laws was still in full force:—and the exceptions for particular classes of persons from the liability to do suit at the sheriff's tourn, or the local leet, to which we have before alluded, are expressly stated; as the archbishops—bishops—earls—barons—and nobles of that description, who ought to have their knights, squires, butlers, &c., in their “free borghs,” for whom they should answer. All others, of 12 years and upwards, ought to be in free borgh or decenna, and should take the oath of fidelity to the king and his heirs, that they would not be, nor consent to, robbers;—and when any person has done this, then he shall not be at liberty to withdraw himself at his own will, from the decenna, nor to be expelled against his will from his free borgh. Nor ought any person to have as his manupast, him whom he has had as his guest for more than three nights.

In these provisions of the Saxon laws, asserted again in Fleta, we find the obligation, and right of every free inhabitant to be sworn and enrolled in the decenna, and to be put in free borgh:—and any person being so sworn and enrolled, was not liable to be put out of it against his will;—or in other words, according to modern language, to be *disfranchised*:—which in truth, embraces the whole substance of the rights and privileges now claimed by burgesses and freemen:—though they are mistakenly supposed to be peculiarly applicable to corporations: whereas their real origin and meaning, as well as the principles applicable to them, are to be searched for in these, our early rudiments of the common law.

The chapter then proceeds fully with the doctrine of outlawry and bail;—likewise that infants and women could not be outlawed. It then adds the formidable doctrine of the “caput lupinum,” which occurs in the Saxon laws, and in the legal treatises to which we have previously adverted.

In the 47th chapter, certain liberties are mentioned, as **sac**—borgh—infangthef—forganthef—soke—sake—toll—**them**—free borgh—lestage, &c. All which terms are shortly but distinctly defined.—None are material to our present inquiry, except “soke,” which is the liberty of holding a court:—“sake,” which is the freedom from suits of shires and hundreds:—and free borgh, which imports the system of police, to which we have before frequently alluded; whereby every man was bound in his decenna, to those who were *commorant* near him, in pledges, each being pledge for the other; so that if one commit a crime, the other nine should be amenable to justice.

Edward I.

Cap. 47.

Pledges.

The 51st chapter of the second book, relates to the king’s native bondmen, and the mode of recovering fugitives.

Lib. ii.
Cap. 51.

The 52nd chapter relates to the king’s *tourn*, and describes the court of the king, the tourn of the sheriff, and the view of the hundreds,—which are directed to be held twice a year, according to Magna Charta. The view of *frank-pledge* is to be the same,—and is directed to be so held, that the peace should be inviolably preserved; and that the decennæ should be as full, as they were accustomed to be in the time of King Henry.

Cap. 52.

Tourn.

Frank-pledge.

Amongst the articles of inquiry at the view of frank-pledge, it is directed, that all the capital pledges, (which we have seen to be, the juries,) should come as they ought to do, and that they should have their decennas,—so that all of 12 years old might be in decenna. And of those who were not in decenna—as clerks, knights, &c.—it should be inquired of whose manupast they were. And if any were wandering, of whom there was any suspicion, then it should be presented who were their receivers. Inquiry should also be made of the villains of the king living out of his demesnes:—and of the men of any lord being in another view.—So also as to the due keeping of the watch. And it is there provided—which clearly shows that the capital pledges were the grand jury—that when they had answered distinctly to these heads, faith was not only to be given to their verdict, but also to the oath of 12 freemen—the petty jury—who should be charged to declare

Edward I.: the truth upon the indictments. It is added, that all free tenants and free men should be sworn as suitors in the tourns and views of frank-pledge: which is declared to have been established in favour of peace.

At the close of the same chapter, speaking of injuries or nuisances which had been done within a year and a day, it is directed, that if the party was present, he should answer to it immediately; if he would not, or if he were absent, the capital pledges should see it remedied. As to those who were not in decenna, *but offered themselves for it*, and could find nine pledges, then having taken the oath of fidelity to the king, and their names being enrolled, (*nominibus irrotulatis*), each should be immediately delivered to his pledges. But they who should not have come as they ought—and they also who had not their decennas as they ought—and they who being above 12 years should not be in decenna—should be amerced.

Enrolling.
Cap. 55. The 55th chapter states, that the king has his court also in *cities and boroughs*, as *places exempt (locis exemptis)*—as in the hustings in London—Winchester—Lincoln—York—Sheppey—and elsewhere; where the barons and citizens have record in those things which are determined before them; and where they ought to enjoy their customs according to Magna Charta. London, and other cities, boroughs and privileged towns, and the barons of the Cinque Ports, are again mentioned; as well as the *reeves of the liberty*, called the *soke-reeves*. Privileges also are referred to the same as those in the Saxon laws, and in the charters we have before stated. And mayors and bailiffs are mentioned.

In these provisions therefore, we further recognize the continuance of the Saxon institutions; and the privileges before enjoyed by London—Ipswich—and many other places.

Cap. 73. In the 73d chapter of the same book, bailiffs and *præpositi* are mentioned.

Cap. 76. And the 76th chapter relates altogether to the *præpositus*.

Lib. iv.
Cap. 11. In the 11th chapter of the 4th book, which refers to the exceptions that might be taken to the condition of a man,

the excommunicated and the bondmen are mentioned;—and, Edward I. as contradistinguished from the latter, the freemen. Those also who residing in any city, privileged town, or demesne of the king, for a year and a day, without the claim of the lord, or being privileged as clerks or knights (whose orders suffice for privilege) were to be considered as free, unless they were degraded by some judgment.

Lib. vi.
Cap. 18.

The 18th chapter of the 6th book relates to abbots:—**and the doctrine of incorporation, as relative to such ecclesiastical dignitaries, to which we have before alluded in our comments upon Bracton, occurs again in this author to a certain qualified extent.**

Thus the seisin of the *predecessors* is spoken of:—because, it is added, “In colleges and chapters there always remains the same body, although they all successively die; as it may be said of a flock of sheep, where there is always the same flock, although the sheep successively die off. Nor does either of them succeed to the other by right of succession; so that the right should descend hereditarily from one to the other; because the right always belongs to the church, and the church always remains.”

Here we see the doctrine of incorporation in its infancy, as applied to ecclesiastical bodies; but it should always be remembered, that this doctrine was not at that time ever applied to municipal aggregate bodies. And we must here repeat, with reference to this treatise, the observation we made before, that the position of the non-existence of municipal corporations at this period, is much strengthened by these two circumstances, that *there is no allusion to any incorporated succession with respect to municipal bodies; but that such a succession with respect to ecclesiastical bodies is expressly asserted.*

We have now completed our extracts from the statutes—**Conclusion** charters—municipal documents—and legal authorities of this important reign; in which not only was the administration of the law, and municipal government, both general and local, carried to a higher pitch of excellence than had thereto-

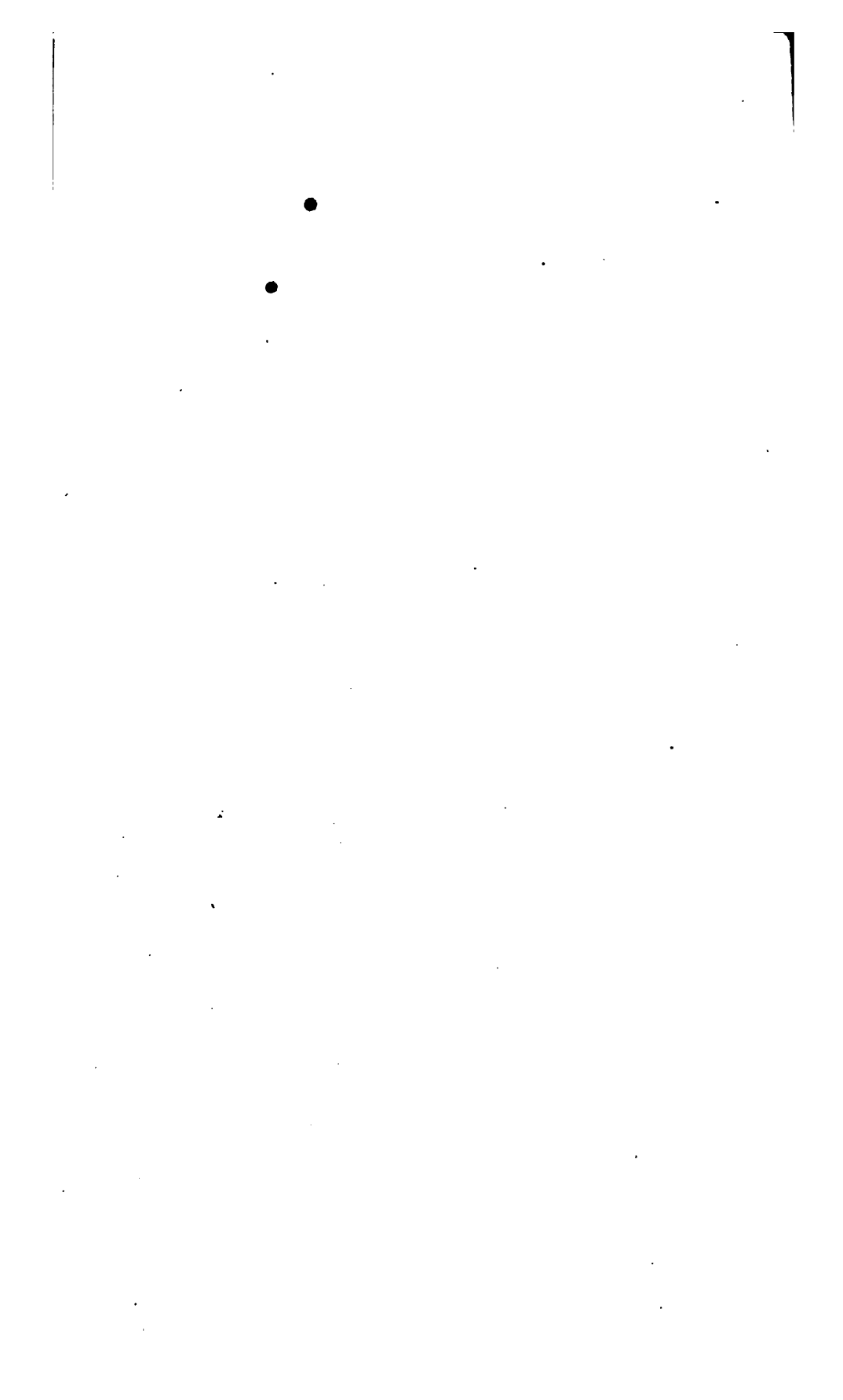
Edward I. fore existed,—and, perhaps, without disparagement of the present enlightened times, even than in any subsequent period,—but also that great change was effected in the constitution, which gave to the citizens and burgesses the right of being represented in Parliament.

Yet notwithstanding all these improvements and changes, none took place in the class of persons who formed the body of the *citizens* and *burgesses*. They undoubtedly continued the same as they had been during the Saxon times, and the succeeding reigns; and they were, beyond all question, the “*freemen*,” that is, the men of free condition, *inhabiting* in the places of which they were citizens or burgesses; and so inhabiting, they were bound to contribute to the common *scot* of the place, and to bear the *lot* or burden of the public offices, which were required to be performed there. As another part of their public duty, they were all bound, as *resiants* in the cities or boroughs, to attend at the *court leet*, there to take the *oath* of allegiance to the king, and to be *enrolled* with their pledges, that they might be forthcoming at all times to do right and justice, and to abide by the law:—and by these means they became the *liberi et legales homines* of the places where they *inhabited*:—that important class of the community so often mentioned in our ancient records and laws—by whom all the important public functions, political and municipal, were executed.

This was the indisputable state of things at this important æra—*within the time of legal memory*;—and at an epoch when our constitution began to assume its more perfect form. And it is with confidence affirmed, that these positions admit of no controversy, because the concurring testimony of all the *laws* which have been quoted,—those of our Saxon ancestors—those of William I.—Henry I.:—the *great charters* of John—Henry III. and Edward I.:—the *statutes* which were enacted—the *local charters* which were from time to time granted to the different cities and boroughs:—and the *usages, customs* and *ordinances* of all those places, in *England, Scotland, Wales* and *Ireland*:—all tend to establish, that these acts to which we have referred, were the constant daily course of

practice throughout the kingdom. When we add to this, Edward I. that the *doctrine of freedom*—as resulting from birth—marriage—and absence from the lords, or service incompatible with their claims—has continued to be acted upon even to the present period—though mistakenly applied to corporations: and that the *mode* of admitting to freedom, even to this day, is by taking the *oath* of allegiance—*enrolling* the name—and the paying of *scot* and *lot*, which is the necessary consequence of being householders—has, after the most careful and laborious investigation, been solemnly decided to be what has been emphatically called the *common law* right of *burgess-ship*, and which actually prevailed in a great portion of the cities and boroughs, down to the latest periods:—it would seem unnecessary to add one word to establish points, so confirmed by law, principle, and practice:—were it not, that inveterate habit and prejudice have closed the minds of a numerous class of individuals to the progress of rational conviction.

END OF VOL. I.



ERRATA, VOL. I.

- Page 47, line 30 & 37, for "Lupinem," read "Lupinum."
 — 89, — 10, for "new," read "non."
 — 94, — 6, for "temporary," read "honorary."
 — 94, — 13, for "the," read "that."
 — 95, — 38, dele "there."
 — 96, — 10, for "argued," read "agreed."
 — 101, — 26, for "upon," read "by."
 — 107, — note, for "Bun," read "Burr."
 — 109, — 12, for "Watwel," read "Wyrwell."
 — 110, — 20, dele "Windsor."
 — 120, — 1, for "one," read "an."
 — 121, — 25, for "no," read "nor." (twice)
 — 122, — 27, for "separate," read "corporate."
 — 129, — 18, for "body," read "number."
 — 134, — 3, for "James," read "Charles."
 — 140, — dele the note.
 — 141, — 11, dele "now called the King's Meadow."
 — 146, — 20, for "quickness," read "quietness."
 — 147, — 14 & 15, dele "and secondary." (twice)
 — 147, — 30, insert "capital."
 — 147, — dele the note.
 — 155, — 7, for "inhospitable," read "inhospitatæ."
 — 183, — 10, for "or," read "nor."
 — 183, — 12, dele "now."
 — 183, — 20, for "replied," read "reported."
 — 185, — 17, for "them," read "it."
 — 186, — 19, dele "the same."
 — 199, — 17, for "have," read "had."
 — 200, — 33, for "Constantice," read "Constantiæ."
 — 219, — 20, for "have," read "has."
 — 239, — 7, for "in," read "from."
 — 244, — 5, for "incorporated," read "reincorporated."
 — 279, — 25, for "Oxford," read "Orford."
 — 406, — 17, insert "in Domesday."
 — 412, — 12, for "five," read "free."
 — 417, — 22, for "in," read "of."
 — 431, — 30, insert "as."
 — 445, — 5, for "and," read "or."
 — 448, — 27, for "of," read "in."
 — 475, — 22, insert "and."
 — 497, — 13, insert "he was."
 — 526, — 12, for "Kingisto," read "Kingston."
 — 532, — 25, dele "as."
 — 534, — 13, for "when," read "where."
 — 545, — 22, margin, for "1229," read "1292."
 — 548, — 4, for "and," read "or."





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